COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON

ELECTORAL MATTERS

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

MELBOURNE

Tuesday, 29 April 1997

OFFICIAL HANSARD REPORT

CANBERRA

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

Members:

Mr Cobb (Chair)

Senator Conroy (Deputy Chair)

Senator Abetz	Mr Laurie Ferguson
Senator Minchin	Mr Griffin
Senator Murray	Mr McDougall
	Mr Nairn

Matter referred:

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

. Whether there should be some standardisation of the rules governing the conduct of industrial elections;

. Mechanisms for the review of the conduct and integrity of industrial elections;

. The cost of conducting industrial elections, including the impact on the resourcing of the AEC; and

. The capacity of the AEC to provide assistance to organisations on a fee-for-service basis.

WITNESSES

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

Role of the Australian Electoral Commission in conducting industrial elections

MELBOURNE

Tuesday, 29 April 1997

Present

Mr Nairn (Chair)

Mr Cobb

Mr Laurie Ferguson

Mr Griffin

Mr McDougall

The committee met at 10.03 a.m.

Mr Nairn took the chair.

CHAIR—I declare open this second public hearing of the inquiry into the role of the Australian Electoral Commission in conducting industrial elections and welcome the witnesses and others in attendance. We will be taking evidence today from the Australian Industrial Registry, the Shop Distributive and Allied Employees Association, the Australian Chamber of Commerce and Industry, and the Australian Chamber of Manufactures.

Before I call on the Industrial Registry to give evidence, we have received three new submissions, dated 7 April 1997, from Mr Neil Keane; 14 April 1997, from the AEC; and 21 April 1997, from the Australian Industrial Registry.

Resolved (on motion by Mr Griffin):

That the submissions from Mr Neil Keane, the Australian Electoral Commission and the Australian Industrial Registry be authorised for publication.

CHAIR—Those submissions are now public documents and can be made available to anyone.

KELLY, Mr Michael Desmond, Industrial Registrar, Australian Industrial Registry, Level 35, Nauru House, 80 Collins Street, Melbourne, Victoria 3000

NASSIOS, Mr Terry, General Manager, Research, Information and Advice Branch, Australian Industrial Registry, Level 35, Nauru House, 80 Collins Street, Melbourne, Victoria 3000

STAUNTON, Mr Damien Patrick, Principal Executive Officer, Research, Information and Advice Branch, Australian Industrial Registry, Level 35, Nauru House, 80 Collins Street, Melbourne, Victoria 3000

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

We have received your submission, which is now publicly available. Are there any corrections or amendments to that submission?

Mr Kelly—No, there are not, Mr Chairman.

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

Mr Kelly—I do not wish to make an opening statement. I would like to explain the document which we have made available to you. It is a list of organisations holding exemptions under section 198 in relation to conducting ballots other than a postal ballot, and section 211, which is organisations holding an exemption from the Australian Electoral Commission conducting secret postal ballots. What I wish to explain is that each of those organisations would hold an exemption either for the total organisation or for particular offices or for particular branches or divisions. If you would like that further detailed, please let us know.

CHAIR—Is it the wish of the committee that the document be incorporated in the transcript of evidence? There being no objection, it is so ordered.

The document read as follows—

CHAIR—Maybe you could start by outlining for the committee how the procedures follow with the registry when you receive an application for an election to be conducted. I know you have provided various things in your submission, but it is good to have it in—

Mr Kelly—You would like some detail in relation to that. I will ask Mr Staunton, who is involved in that, to give you some detail.

Mr Staunton—When an election notification is first lodged in the registry, we very quickly register it on our computer base system—we call it our case tracking system—so as to capture what we call an E number. We endorse that on the notification and we immediately fax the notification with the E number endorsed to the Australian Electoral Commission so that they might be aware that the notification has been received by the registry. An action officer then processes it in the registry and it is finally taken to a registrar appointed under the act for the purpose of the decision to be made under section 214 of the act. When that decision is made, it is actually faxed to the Australian Electoral Commission together with a request that they make arrangements to conduct the election. At the same time we mail to the Electoral Commission a copy of the certified rules of the organisations. The registry does maintain a rules database and is in a position to be able to know what the rules are at any point in time, so we provide those at the time of the decision being made.

We send a copy of the decision to the organisation or to the branch concerned and we provide copies to the national director of the industrial elections area of the Australian Electoral Commission, and finally we do some in-house work with our files and computer based system, and eventually we do receive an acknowledgment from the Electoral Commission that they have actually received the request. I have just gone through the procedural steps.

CHAIR—With the union rules, they presumably are required to give you changes that might take place within a particular period of time. Does it depend on the individual organisation—

Mr Kelly—Changes in relation to—

CHAIR—To rules of election. You said you have got a database of the rules and a particular organisation is going to conduct an election and you pull out the rules and send that off to the AEC. If those rules have been changed since the last time an election was held, the organisation is required—

Mr Kelly—They are actually required for us to certify those rules before they can be validly instituted. So we would always have a set of rules which are current and up to date.

CHAIR—You have given us the list of exemptions that are currently there. Are those exemptions in place on an ongoing basis? Once they have got an exemption, that exemption continues until when? What can and cannot happen?

Mr Kelly—There is a capacity for revocation, so there is an ability for an application to be made for such an exemption to be revoked. If the legislation were to change, clearly that could have an effect on whether or not those exemptions continued. But in the normal course of events—you are quite right, Mr Chairman—the exemptions would continue unless there were an application to revoke them or unless the legislation changed the ability of those exemptions to exist.

CHAIR—Are they the only two things that could change that? Say there were a complaint by members of one of the organisations about the way in which the organisation was going about its elections. If they were under exemption 213, the organisation would not be required to have a ballot by the AEC?

Mr Kelly—Yes, that is correct.

CHAIR—So if there were a complaint by a number of the members of that organisation, that they felt the way in which they were electing their officers was not appropriate, would that complaint come to you?

Mr Nassios—There is only one ground and that is if the application is made by the organisation itself, or if the registrar is no longer satisfied that the rules of the organisation provide for the conduct of elections of the kind. It is really that the rules themselves are not a problem.

Mr Staunton—Under subsection (2) of section 213, there is the provision for revocation of an exemption. It says that a registrar:

. . . may revoke an exemption granted to an organisation . . . on application by the committee of management . . . or if the Registrar: (i) is no longer satisfied as mentioned in subsection (1).

When you go back to subsection (1), you see it talks about the rules complying with the requirements and paragraph (b) says that, if an exemption was granted or is in force, the elections will be conducted under the rules and:

(ii) in a manner that will afford members entitled to vote at such elections . . . an adequate opportunity of voting without intimidation;

Conceivably, if a complaint was made that was directed at those sorts of issues, the registrar could well be no longer satisfied, subject to following the process that is set out in subsection (2).

CHAIR—Okay. So members could in fact make a complaint to the registry in that

regard. Is there a common thread as to why these organisations have exemptions?

Mr Kelly—Each application is considered on the merits of that particular application. During my time as Industrial Registrar, I have done a small number of them and I would not say that there is any particular thread. The employer organisations that I have done tended to be small—for example, small numbers like 24 as the total membership of the organisation. Really, the only major union one that I have done was a large division of the CFMEU. It was the old miners federation and traditionally they had conducted their own elections from 1920 to 1989, when the change of the act had brought about a change and they subsequently wanted to—that was the form of their application—revert to their traditional method of election. So I would have to say that I do not know that there is a trend. There having been so few of them over the last few years, it would be hard to come to any conclusion about that.

Mr GRIFFIN—So when the CFMEU is referred to here—under the two organisations with exemptions under section 198 and also under section 213—that relates specifically to the mining section?

Mr Kelly—Certainly that is the one I did. I would have to check the records to make sure. It was not something before my time. It was certainly the mining and energy division.

Mr GRIFFIN—And that application was granted, I take it?

Mr Kelly—Yes, it was.

Mr GRIFFIN—It would be interesting to get some detail as to whether, in fact, it is the entire organisation or what components.

Mr Staunton—I could add to what the Industrial Registrar has said. I have noticed—it is only anecdotal, without looking in great detail—that the unions that apply tend to be in relation to their collegiate elections. Where you have this by and from situation, they have tended to apply for the exemption in relation to that, whereas when it came to their direct voting systems—the masses of members—they have tended not to apply.

Mr COBB—I am sorry I was a little late, so I may be behind the pace a bit. The difference between 198 and 213 is that most of the exemptions are under 213. Under 198 they want an exemption from postal ballots so you can get a fuller participation. Is there evidence that that is the case? Is it followed up to see whether it is fuller participation? How is that measured?

Mr Kelly—The process for an application under 198 is that the organisation, firstly, tells its own members that it is going to make application. It is required by the regulations to actually notify its members of the resolution to seek the exemption. When it

comes in, I also advertise in the newspapers, calling for any objections, in essence. In the case where there are no objections, I would still have a public hearing, which is again notified in the law list in the newspapers.

The organisations are then required to come along on the public record—on transcript. They have the task of convincing me in that case that there would be greater participation. In the ones that I have done—I think this is probably borne out by the Australian Electoral Commission—the percentage of return where it is a secret ballot other than a postal ballot is much higher.

In the case of the mining and energy division of the CFMEU, the evidence they put to me in terms of the percentage return historically was around 70 per cent to 80 per cent, whereas the postal was significantly less than that. They actually present evidence that there is a much higher participation rate of their own members.

Mr GRIFFIN—The nature of that union is that they are in like workplaces, so the capacity to be able to do on-the-spot voting is much higher.

Mr Kelly—That is correct. It is based around a lodge system, and it is done at the mine sites.

Mr GRIFFIN—We have seen the same thing in council elections in Victoria just recently where postal ballots were, on average, quite a bit lower than actual attendance votes.

Mr COBB—How relevant are those criteria to full participation and voting without intimidation to section 213 exemptions?

Mr Kelly—In terms of section 213, those applications are also advertised. Anybody who wishes to object can do so. There are certain criteria in the regulations that provide for objections. If there are objections, I am obliged to hear those objections. If, for example, there was a concern amongst members, I would expect, given the level of publicity, that members would object to such a process being sought by their organisation. I again then have a public hearing, where the organisation is obliged to come along on the record to present material to the effect that, in fact, the processes available will ensure that there is no intimidation.

The sorts of things that you might look at is there is no history of any Federal Court action in relation to the elections themselves, there have been no complaints in the history of the organisation's own records in relation to the conduct of their elections and so on.

Mr COBB—Can you just give us a specific example of an employer organisation. I do not know whether you are familiar with these examples but the Pastoralists

Association of the West Darling, for example, is in my electorate. I would be just interested to know on what grounds they applied and how you judged it.

Mr Kelly—I do not think that was one that came before me. There will be a public hearing on the matter. We would have a transcript, which we can make available along with the decision of the registrar of the time, if that would be helpful.

Mr COBB—I would be interested.

CHAIR—Can I just clarify something about the two exemptions. Under 198, that is an exemption to conducting a postal ballot?

Mr Kelly—That is correct; it has to be a secret ballot.

CHAIR—But that would still be conducted by the AEC?

Mr Kelly—Unless I grant a 213.

CHAIR—Is that the only alternative to the postal vote ballot, a secret ballot?

Mr Kelly—Yes; 198 requires that it be a secret ballot.

CHAIR—And that, unless they then had an exemption under 213, would still be carried out by the AEC.

Mr Kelly—Yes.

CHAIR—So in assessing under 213, where it isn't carried out by the AEC, presumably you would take into account how they propose to conduct that, whether it is going to be a postal ballot by the organisation themselves or a secret ballot by the organisation themselves?

Mr Kelly—Unless they had an exemption under 198, it would have to be a secret postal ballot. If they get a section 213 exemption, it must be a secret postal ballot that they conduct. The mechanism for the conduct of the election would be in sufficient detail to satisfy me that the election would be conducted as required.

Mr GRIFFIN—There are only two organisations which components thereof have exemptions from postal ballots. The mining section of the CFMEU, which you mentioned earlier, also happen to have an exemption under 213. So the Australian Rail, Tram and Bus Industry Union, whatever exemption they have got to postal ballots, still require the ballots to be done by the AEC. And there is only one organisation that you are talking about that is exempt from both the AEC and postal, and that relates to, from what you have said, we think only the one section of that union anyway and it is because of

historical reasons about its organisation and its operation.

Mr Kelly—That is correct.

Mr McDOUGALL—You mentioned earlier, Mr Kelly, that there could be a case of individual positions being exempt. Could you explain that a little bit more?

Mr Staunton—Section 211, which is the provision to make an application, provides that a committee may lodge in the registry an application to be exempted from 2101—that is the provision requiring the Electoral Commission to conduct the elections—in relation to elections for officers or an election for a particular office in the organisation or branch. So, depending on the nature of the application, it might have been in relation to all officers in the organisation, it might have been in relation to officers in just a particular branch or it might have been in relation to just one office in a particular branch of an organisation. So that is what we meant by 'individual'.

Mr McDOUGALL—Have you got any examples of where you have approved—

Mr Staunton—We could get you those examples. Typically what comes to mind is that they may have made application for only those primary officers subject to a collegiate electoral system. You might have had a first stage election where all members of a committee of management are elected, and that will be done by the Australian Electoral Commission, but then it is necessary for that college to vote by and from themselves officers perhaps like the president or the secretary and so on. It might be that they have decided in relation to that collegiate election they require a 213 exemption. They did not perceive it necessary, if you like, for the Electoral Commission to actually conduct that part of it.

Mr McDOUGALL—So what you are saying is that that would be an expansion of this list you have given us here?

Mr Staunton—We can provide further details.

Mr McDOUGALL—Mr Chairman, I think that would be handy to have. Why do you think there has been a much larger exemption in relation to employer organisations than employee organisations? Is it purely on numbers?

Mr Kelly—I actually don't have an answer for you on that; I really don't know. Since the whole issue comes from force of the members of the organisation themselves—as I said, the ones I have actually handled have had small membership. But, on the other hand, when I run my eye down this list there are also some rather large ones.

Mr GRIFFIN—It could be that employers are keen to avoid the scrutiny of the AEC in terms of the conduct of their ballots.

Mr Kelly—I make no comment in relation to that remark, Mr Griffin. But, Mr McDougall, I actually do not know.

Mr McDOUGALL—That was the question I was going to raise because you were talking earlier about the point of smaller numbers. But I can assure you that, when I looked at that, I saw some organisations in there that would have very large numbers and therefore I am curious of what their reasons for exemption would be.

Mr Kelly—Clearly we could provide you with copies of the applications, for example, of the organisations that have applied for these. You will find, of course, that they predominantly comply with the requirements of the legislation, as it is written.

CHAIR—There may be another question that could be asked in relation to that: how many organisations do you get applications from, how many are approved and how many are rejected? You could look at this and say that you get heaps of applications from employee organisations but you reject them. I do not know.

Mr Kelly—We would have to do some work on that. If the committee would like that information we will look at our register and prepare you some information on that.

Mr Staunton—I could comment just in broad terms, if it would assist. Basically there have been applications rejected, but generally those would have been on the basis of a failure to fully comply with the process set down in the legislation to properly make an application.

Mr COBB—Is it possible to get a complete list of all the registered employer and employee organisations? Presumably it is only a few pages.

Mr Kelly—We have a list here. I have one copy but I am more than happy to make that available to the secretariat now.

Mr GRIFFIN—Just to go back to Mr Staunton's point: what you are saying is that where there have been applications rejected, in your experience, it has been merely on technicalities.

Mr Staunton—Mainly on technical provisions, yes.

CHAIR—In relation to membership and the list of membership of organisations, under the old act, as I understand it, they were required to update their membership lists on a three-monthly basis. Under the new act they just have to file an annual statutory declaration. There could be a situation where you are having an election almost 12 months after the most recent statutory declaration was lodged, so do you do anything about checking the accuracy of the membership lists at that time?

Mr Nassios—I think we are referring to section 268. Under section 268 the actual statutory declaration that the registry gets does not contain the register of members. The statutory declaration certifies that they have maintained the register.

CHAIR—Yes. So you have no knowledge really of the membership of that organisation at all?

Mr Nassios—No.

Mr LAURIE FERGUSON—Is that a change or was that the practice before the latest legislation?

Mr Staunton—Under the previous act there was, as the chairman has indicated, a requirement to lodge the list of members on a regular basis. As I recall, there was a provision, and I think it was section 153, to seek an exemption from that provision. Again, as I recall—and I would like to check this out—most organisations had such an exemption from actually lodging the list of members on a regular basis.

Mr GRIFFIN—So the headline 'Reith relaxes roll requirements' would have some truth to it, I guess, wouldn't it?

Mr McDOUGALL—Maybe I have missed something here but, if you require them to lodge a statutory declaration, do you require them to lodge a statutory declaration and say how many members they have, without the list, or do you just say that they have verified that their list is correct?

Mr Nassios—I am aware that, in the context of a financial return that the organisation must lodge with the registry, there is a requirement that they list the number of members that they do have, yes.

Mr Staunton—There is also a requirement under regulation 43, in relation to organisations of employees only, to lodge the number of members as at 1 January each year.

Mr McDOUGALL—If I can just take this a bit further, and I am looking at some of these employer groups. A lot of those are small businesses. There is going to be a big turnover of small businesses coming and going. I am trying to work out how you end up with a knowledge of, at the time of an election, who was on the list last time and who is off the list now, maybe because they went broke, got sold, or were bought up or swallowed up into another organisation, or it is simply a statutory declaration saying we have X number of financial members—end of story?

Mr Kelly—And that they have maintained the register. They are signing the statutory declaration to the effect that it is current and that they maintain it as current.

Therefore, it is an obligation on the organisation itself.

CHAIR—It is a stat dec that they maintain it, as required by the act.

Mr Kelly—That is correct.

Mr LAURIE FERGUSON—Is there a set rule in regard to all union elections or do they vary with each organisation as to access to the membership list before the ballot: the time at which the list has to be supplied to candidates?

Mr Staunton—My mind is a blank on that. I know there is a provision for that but I cannot remember if it is actually in the act itself—I suspect that it is.

Mr LAURIE FERGUSON—Is it a set time for all organisations?

CHAIR—Is it not in the act?

Mr Kelly—No. In answer to your question, Mr Ferguson, there is no specific legislative requirement in the act for the particular provision you are referring to. In the individual rules of organisations, I would suggest, they may well have a provision of that kind in them. But, if you were to say to me, 'Do all the rules of all the organisations have that?', I would have to say, 'I would think not.'

Mr LAURIE FERGUSON—So there could be concern that, in some organisations, people would be given limited opportunity to challenge the membership list and peruse it and examine it?

Mr Staunton—I am hazy on this area. I believe the Australian Electoral Commission would have policies on those matters.

Mr LAURIE FERGUSON—But it is not covered by the act?

Mr Staunton—Not expressly, no.

CHAIR—Do you think that, if organisations were required to file their membership lists with the registry, that would be a safer way of ensuring an up-to-date situation? Do you think it would make much difference?

Mr Kelly—Given that it is only at a particular point in time that we would have the full list of the members of the organisation, unless it was linked to the election process itself—and you have a very significant administrative issue that you would have to deal with in that—I cannot see that it would make that much difference. The organisation is obliged to keep its register of members up to date, and they say that they are doing that on a regular basis in a statutory declaration. If we had a list from them, or whether they

kept it themselves, unless you actually had it specifically at the point of the election I cannot envisage a difference.

Mr Staunton—In addition to that I would say that the requirement under 268 is merely about keeping a register of members. The requirement to maintain it is that if you get a new member you put them in, if somebody leaves you take them off or if there have been some change in the particulars—the postal address, for example—then you make the change. But in terms of eligibility to participate in an election that has a notion of financiality criteria—and that depends on the rules and can vary from organisation to organisation—the list of members per se is not necessarily a roll of voters.

Mr GRIFFIN—It is a guide but it does not necessarily correspond?

Mr Staunton—It is the whole population, if you like.

Mr GRIFFIN—Just on some of the employer organisations, could you give us some examples of the sorts of elections that would be conducted by one or two organisations that you as the registrar have seen? Who gets elected in an employer organisation?

Mr Kelly—In terms of their committee of management and their officers, that varies from organisation to organisation. Your president—

Mr Staunton—Typically you would find that an employer organisation will have an executive director, for example, who may or may not be a holder of an office, depending on how it is established under the rules.

Mr GRIFFIN—Would they normally be elected, though?

Mr Staunton—Maybe, maybe not. It depends on the nature of the rules and the duties and responsibilities they hold under the rules and whether or not they meet the definition of an office in subsection 4(1).

Mr Kelly—It is generally the committee of management and whoever is what I would call the key secretary. That name, of course, varies considerably. It is usually moderate numbers of people, not big numbers—five, six, seven positions; that sort of thing.

Mr GRIFFIN—First there are unions, which might have 20, 30, 50 or 100 depending on—

Mr Staunton—Sorry; I understood you to say employer organisations. Perhaps I have misunderstood the question.

Mr GRIFFIN—No, you are right. I was asking about employer organisations. I am trying to get a comparison. You are saying that a lot of employer organisations might have five or seven positions that actually are elected from the membership, versus unions, which may have, sometimes, in some cases, hundreds.

Mr Staunton—Yes, as a generalisation that is a fair comment. Particularly now with the amalgamations, unions can have very complex structures.

Mr GRIFFIN—So that complexity is a factor in elections and the need for them—there are so many more positions where contests are capable of occurring versus employer organisations, which tend to have very few positions that are electable.

Mr Staunton—Yes, I would agree with that.

Resolved (on motion by Mr Cobb):

That the list of registered organisations provided by the Australian Industrial Registry be accepted as an exhibit to the inquiry.

Mr LAURIE FERGUSON—Has there been any survey of employer organisations' actual electoral processes? I noticed one of the other submissions speaks about eight employee methods of voting, et cetera. Is there any survey of employer organisations?

Mr Kelly—No.

Mr LAURIE FERGUSON—Or a survey of the internal processes of those that have exemptions?

Mr Kelly—No.

CHAIRMAN—Thank you for your attendance.

[10.47 a.m.]

BLANDTHORN, Mr Ian John, National Assistant Secretary, Shop, Distributive and Allied Employees Association, 5th Floor, 53 Queen Street, Melbourne, Victoria

MACKEN, Mr Antony John, Solicitor, Shop, Distributive and Allied Employees Association, 5th Floor, 53 Queen Street, Melbourne, Victoria

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

Mr Macken—No, there are none.

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

Mr Macken—If I may very briefly. The members of the committee are advised that we have carefully re-examined the submissions that have been made in writing. We adhere to those submissions on behalf of the association. We are here to develop or enlarge upon them and answer any queries that any member of the committee may have. Other than that, we are not aware of anything additional that might be added to what has been put before the committee and provided to its members.

CHAIR—Thank you. A previous witness from the Australian Industrial Registry provided us with a list of organisations which carry exemptions under 198 and 213 of the workplace relations act. I see that the Shop, Distributive and Allied Employees Association has an exemption under 213 of that act—

Mr Macken—Yes.

CHAIR—So it does not use the AEC for its elections; is that correct?

Mr Macken—No, and I am glad to have the opportunity of correcting that. The Shop, Distributive and Allied Employees Association is an industrial organisation of employees with about 230,000 members. It is some 90 years old, within a year or two. It has members in all states organised in branches. The members in all states elect delegates to the national council of the body, which is the supreme governing body. It used to meet two-yearly and it now meets yearly or more often as required. When it meets two-yearly for the purpose inter alia of conducting elections, every person present has been directly

elected by the membership in an election conducted by the Australian Electoral Commission.

The exemption to which you refer, sir, is only in the second tier election, that is, the election by and from the members of the national council, which is conducted at the meetings of the national council held two-yearly. And the reason for the exemption is that it is more convenient, granted that the second tier election by and from the members of the national council be conducted then and there, so far as possible. And that is the reason why the Australian Electoral Commission is not involved in that process but the exemption relates to only that second tier election. Every other person participating in it has been directly elected in a direct election of the rank and file membership conducted by the AEC.

CHAIR—Maybe I will ask one other question myself before I open it up to other members of the committee. The matter of AEC charging for their services, which was addressed in your submission: you have very strongly opposed any introduction of fee for service as far as elections are concerned, but you make the comment that perhaps the AEC could offer a fee for service to other entities such as professional associations.

Mr Macken—Yes.

CHAIR—I saw that as a bit of a double standard, so to speak, in that it sounds like 'don't charge us but go and charge somebody else to charge'. Could you enlarge on that view?

Mr Macken—The two propositions might seem to be inconsistent but the linking element that explains the apparent inconsistency is the tribute that is desired to be paid to the expertise of the AEC. It has amassed, since 1949 or thereabouts, a very large amount of expertise in the conduct of elections, including industrial elections, including often bitterly contested elections in associations, which have attracted a certain amount of political and other attention.

What is put is that there is no reason, firstly, why that expertise should not be made available to other associations—for example, of accountants and lawyers and perhaps the AMA—which are non-industrial but very similar in many respects to registered associations of employers or employees.

Secondly, if you have a system in which the AEC is entitled to charge for the conduct of elections of industrial organisations but has a statutory monopoly in respect of those, the parliament may be faced with some pressure that this is inconsistent with competition policy and that bodies which perhaps may not have the expertise and the public standing of the AEC should be entitled to be considered as proper bodies for the conduct of industrial elections as well. It is put that that would probably not be desirable and be a move away from what has worked pretty well to date.

Mr GRIFFIN—When you talk about industrial elections, of course you are talking about employer and employee organisations, which is something which is lost on some of the community.

Mr Macken—Yes, that is true.

Mr COBB—Presumably, though, if you held your own elections, it would cost you something. So would you be in favour of, say, a partial cost recovery?

Mr Macken—I have no policy instructions on that point but, on the basis that some charge is less advantageous than no charge at all, it would be a grudging acceptability—but it could be said.

Mr COBB—You also say you are against any standardisation of election rules.

Mr Macken—Yes.

Mr COBB—Would there be some areas where you may be in agreement with standardisation? For example, the AEC have put to us that, if the process of using declaration envelopes was standardised, it would make their job a lot easier. You presumably would not have any objection to that sort of technical detail?

Mr Macken—Any recommendation of the AEC that would make their task easier and did not disturb the principle that the fundamental structure of the elections should be fixed by the body itself or its members—conformably with the requirements of the act—would have to be taken very seriously. But I have to say that I do not understand the particular recommendation that is referred to. If it is in relation to standardised envelopes or something like that, then so be it.

I would like the committee to understand—we put this very firmly and I would be surprised if there was significant dissent from it—that the experience of some 90 years in the conduct of elections has led the courts to be quite firm in the importance of retaining the right of the organisation itself to tailor its elections to the industry, the language of the industry, the expectation of the members and the like. There are different traditions and different expectations and, provided that they conform—as they must—with the requirements of the act, I think it is important for the credibility of the industrial process that they be left with that freedom.

Mr COBB—Can you give us an example or two where some procedures may be unique to your union?

Mr Macken—This is not unique to SDA, but an example which is permitted by the act is that the SDA elections of national officers—with the exception of the four key national officers—are so-called second-tier elections, or collegiate elections. That works

pretty well and it is permitted by the act, within safeguards. It would be a pity if that was eliminated and you had to elect all of your national officers by a postal ballot of 230,000 employees or members, many of whom would not know those officers if they came from a different state. The present structure is that you vote on a state branch basis for those you know, and then, in respect of the honorary officers, they elect those persons by and from their own number. Experience has shown that that works in the case of a federation of state branches or any organisation that was formed out of a federation of state branches. The SDA is one such body and most of the older, pre-1914, bodies are federations of state branches and have that tradition.

Mr McDOUGALL—You mentioned 230,000 members in relation to the election of your national body. What percentage of those 230,000 would vote in an election for that national body?

Mr Macken—I could ascertain that, but the answer would firstly lie in the records of the Industrial Registrar—to whom a return must be made by the AEC—who conducts the elections. So you would have to have an aggregate of the state branches voting. The general expectation in an industrial organisation is that about one-third will vote in an election.

Mr COBB—Are the elections contested every time?

Mr Macken—It is fairly rare for them to be contested but there are certainly records of their being vigorously contested over the last 20 years or so.

Mr GRIFFIN—When was the last contested election in the Victorian branch?

Mr Macken—I am hesitant about attempting a more precise answer than this, but my colleague believes that it was not the last election but the election before that. They are four-yearly elections.

Mr GRIFFIN—That was in the power to full challenge or just isolated positions?

Mr Blandthorn—Isolated.

Mr McDOUGALL—Is it fair to say that the SDA would have a very large proportion of members who are casual or part-time workers? Do you have any idea of how many of those 230,000 are part-time or casual workers and how many of those casual or part-time workers would take part in voting? Do you have any records of that?

Mr Macken—I can certainly answer the second question. It is a secret ballot, so the answer is a firm no. But, in relation to the proportion of part-timers and casuals to full-timers, can I ask my—

Mr McDOUGALL—I'm trying to determine the relationship of the 30 per cent to the full-time people in the union—in other words, people in full-time employment as opposed to those in part-time employment or casual employment.

Mr Macken—I understand. Perhaps if my friend can attempt the dissection into full-time—

Mr Blandthorn—In very broad terms, the part-time and casual membership would be about two-thirds of the total membership. We could give you more precise figures, but they are roughly—

Mr McDOUGALL—So the 30 per cent could be 30 per cent of a third of the membership?

Mr Macken—The two figures correlate, but I don't think that the conclusion necessarily follows that it is the full-timers who vote and the part-timers who don't. Furthermore, there is a pretty high turnover, of course. One says one-third full time to two-thirds part time. That is taking a picture at one moment in time. You can get quite a large turnover, obviously, particularly of the more volatile section, during a 12-month or even a two-, three- or four-year period between elections.

Mr McDOUGALL—But, working on the basis of having an election only every four years and two-thirds of your percentage are part-timers, the chances of them being involved at election time is going to be pretty rare anyway, isn't it?

Mr Macken—I am now speculating but an election is generally conducted fairly intensively in the course of two months—six weeks to eight weeks. Each person who is on the roll—and there is no restriction as to who would be on the roll as between part-timers and full-timers—would have an equal opportunity to vote.

Mr McDOUGALL—Has an SDA election ever been challenged? I am talking about in recent times—not way back. In the last couple of decades, let us say, have you had an SDA challenge in the courts?

Mr Macken—Between 1974 and 1982 the elections in the SDA were the subject of almost continuous challenge in the Australian Industrial Court and thereafter in the industrial division of the Federal Court of Australia, but the grounds of the challenge were not that there was anything wrong with the election but that there were so-called Moore and Doyle difficulties; that is, bodies which everyone thought to be branches of a federal organisation, a factional group, that were contending were really properly understood to be a state trade union registered under the laws of Queensland, New South Wales, South Australia or Western Australia. So that was ultimately resolved—as it might have been very much earlier, if I may suggest—by requiring that an election be conducted by the Australian Electoral Commission on a recreated roll on which every apparently eligible

person was entered. Those elections were disputed, but their resolution has meant that since, I think, 1982 there has not been a major electoral challenge within the SDA.

Mr GRIFFIN—Quintessentially, they were technicality arguments; not a question of fraud.

Mr Macken—Yes. There has never been any suggestion of any malpractice of any kind, in any respect, in relation to any election within the SDA. The SDA's reputation, I presume to say, is impeccable.

Mr McDOUGALL—Can I come back to one of the questions that were asked earlier in relation to the cost of conducting an election. Your submission indicates that you feel that the AEC should pay but, in the case of a professional organisation, they should pay for their own. At the end of the day I would consider, and I think it would be fair to say that you would consider, your organisation a professional organisation in that it has a professional duty to its members. The simple part of my question is: why should the taxpayer fund one professional organisation and not another?

Mr Macken—Sir, I wouldn't derogate from the force of what is put but I would say that there are two distinctions. One is that, in relation to organisations of employees or employers, the AEC has a statutory monopoly. Allowing for exemptions in particular circumstances, and they are not given readily, the AEC has a statutory monopoly. If it could charge, the parliament may be faced with submissions that other bodies should have the right to tender for, submit themselves for or be considered for that remunerative work. The SDA would think that that would be undesirable. The present system works reasonably well.

The second distinction is that, to take a hypothetical case, if the AMA, the Institute of Chartered Accountants or whatever chose to use the Australian Electoral Commission, they would be choosing to use it and therefore why should they not pay for it. But a trade union has no choice but to use the AEC. That is not said critically—it has worked very well—but that is the point of distinction between the two cases, I think.

CHAIR—You say in your submission that, if a fee were to be charged, there could be a loss of confidence in the AEC. I don't really understand the connection in that regard.

Mr Macken—I wouldn't believe that that would lead to a loss of confidence in the AEC, nor that there would be any grounds for it. It might simply be that, where elections are conducted other than on the basis that the election serves the public interest, as does a parliamentary election, its intruding into that any element of a user-pays basis might be thought to derogate from the undoubted confidence in the AEC's process which presently exists. I don't put it higher than that.

CHAIR—Are people standing for election required to pay a candidate fee or

anything like that?

Mr Macken—No; nor would that be a lawful requirement. No deposit or no forfeiture can ever be associated with candidature for election in a trade union in Australia. That would be unlawful, contrary to the act.

CHAIR—With 230,000 members, if the AEC charged a fee—this is being hypothetical—the cost per member would be sort of minute, wouldn't it? Even based on only a third voting, that is still 70,000-odd people. Looking to contribute to the costs incurred by the AEC to conduct the election on a per member basis, it would be probably quite small.

Mr Macken—I think if you choose to apply that analysis that would be so, but it wouldn't be the member who would be paying the costs. It would be one unitary body or its branches who would be paying it, and the impact would be not insubstantial.

Mr GRIFFIN—I don't think it would be that minute, either. In terms of individual costs to the 230,000 members, you are talking about a letter being sent to all of them, including ballot papers, et cetera. There are additional printing costs. Then you have to deal with what is returned. You would be talking in dollars per member.

Mr Macken—You would be talking in dollars per member, certainly. For postage stamps and reply paid envelopes alone you are talking about $1 a member, and then there is the quite time consuming task that would be imposed on the AEC of checking the roll and that sort of thing. The SDA is on computer, I think, completely, so that task is reduced but the roll has to be verified. My experience of the AEC is that it does its work with great efficiency and studied fairness, and I think it has the confidence of the industrial relations community, whatever other differences they may have. But I think the costs would be substantial to an organisation which had to meet the bill. You are talking about perhaps an aggregate of a quarter of a million dollars in disbursements through the branches.

CHAIR—Has the SDA ever had any problem with the AEC as far as the AEC interpreting your rules is concerned?

Mr Macken—We have had differences of opinion about the interpretation of the rules, but generally we find that they can persuade the SDA solicitor that they are right and he is wrong, or sometimes the SDA solicitor can persuade them that he is right and they are wrong. I do not see that as a problem or difficulty; I see it as a great advantage, because minds can differ about this. They always have a good reason, in my experience, for taking any particular view. I would much rather have a discussion with an officer at the Industrial Registrar's office than have a court case in any court to determine who is right and who is wrong.

The service provided by the Industrial Registrar of the Australian Industrial Relations Commission is very valuable in that regard as well as the AEC. If you do get to the stage of having an election inquiry, it is quite rare that it is on a question of law. If it is, the AEC has the capacity to seek the assistance of the court in getting a ruling on any disputed point. That does happen from time to time and that is a useful service, too. But generally they get it right or they are regarded as getting it right.

CHAIR—So do your rules change very often?

Mr Macken—Yes, because, if I can respectfully say so, the act changes very often. I think it was changed some 60 times between 1904, when it was introduced, and 1988, when the Hancock committee met. It has not, if I may so say, stabilised yet. The expectation in the industrial committee is that it has not come to rest as yet. I would expect that parliament would be asked to consider further changes this year. Presumably, as the new act, which is fairly radical in its developments, is studied, inevitably problems will be identified and submitted to parliament for correction, as one would expect.

CHAIR—That is as far as the act is concerned, but that does not necessarily impact on your rules of election within your organisation.

Mr Macken—If the question is referring to the substance of the election rules, no, they do not. The last significant change was that which became necessary in the 1970s to accommodate the statutory licence and definitions in relation to collegiate voting, which were introduced in 1973, 1974 or subsequently. In themselves, the election codes do not change in most organisations very much at all.

Mr COBB—When you do have a contested election, how are the members informed? How is the postal balloting carried out?

Mr Macken—Firstly, nominations are called for in accordance with the rules and/or the act. The candidature is verified by the Australian Electoral Commission. The roll of eligible voters is prepared by the administrative officers of the union and then checked and verified by the Australian Electoral Commission. Then the fact that the election is to be held would be advertised either in newspapers or in the journal of the association or its branches, or both. Then those on the roll would receive a voting paper with the names of the candidates and instructions for its completion and return.

Mr COBB—That goes to their home?

Mr Macken—Yes. That is a pretty important protection against potential fraud or interference even by third parties with the electoral process.

Mr COBB—So the members would find out, as you say, either by advertising or by a personal letter or journal from the union coming to them describing all this with

plenty of notice?

Mr Macken—I am sure of that. Certainly plenty of notice. That is a requirement of both the rules and the statute. They would be in pretty much a like position as any member of any electorate in relation to a parliamentary election—neither more nor less except perhaps there is more of a talking point in relation to a general election than a union election.

CHAIR—There is one thing out of that: does your membership predominantly use their home address? We have had some evidence in relation to the rolls in various organisations. In relation to whether people are on the roll under their home address or a work address, would you like to comment what would predominantly be the case in your association?

Mr Macken—In almost every case the member gives a home address. It would be regarded as a matter for inquiry and correction if a member omitted a home address. It is the home address to which the ballot papers would be sent. It is not SDA policy to have any view on that one way or the other, but I think I could presume to say that that is almost essential protection against fraud. If you had a large number of ballot papers going to a workplace address, the possibility of interference with the ballot by third parties, even perhaps non-union members, would be greater than if the ballot papers are posted to the home address.

CHAIR—It happens in some organisations.

Mr Macken—I hear what is said.

Mr LAURIE FERGUSON—Is that your own policy? There has never been any pressure by the AEC? That has been the SDA position from the beginning?

Mr Macken—In my experience of the SDA, which would go back to the 1970s, I would say it is simply regarded as axiomatic that every electoral roll must be compiled on the basis of home addresses. In some cases members will not give a home address, and therefore you have a difficulty in chasing that up.

Mr LAURIE FERGUSON—You cannot see a good reason for large numbers of people to be registered care of their workplace?

Mr Macken—Not for electoral purposes. The propensity that that might give rise to for interference with the ballot is manifest, I think, particularly with any organisation which has a fairly large number of part-time workers and a high rate of turnover.

Mr McDOUGALL—I think that at present an inquiry into an election can be initiated by one person. I think that person has to have been a member of that organisation

within the previous 12 months. What would the SDA's attitude be if that provision was extended to an AEC returning officer if the officer felt there was an irregularity or became aware of an irregularity?

Mr Macken—If an Australian Electoral Commission officer acting as a returning officer thought there was an irregularity, I would see no good policy reason why they should not have the right and perhaps the duty to bring it to the notice of the court for inquiry. The SDA does not have a policy on that, therefore I am speaking simply because it seems to be a matter of commonsense.

Mr McDOUGALL—That it should be?

Mr Macken—Definitely, yes. Provision exists for the Australian Electoral Commission acting as a returning officer, or one of its officers acting as a returning officer, to seek the guidance of the court, and the court is always willing to give it. Of course, that would relate to an irregularity as much as to a disputed interpretation of the application of union rules.

Mr McDOUGALL—But the current rule requires one member of the organisation.

Mr Macken—I am sorry to say that I do not know that that is so. If it is, I accept it, of course.

Mr McDOUGALL—Would you be prepared to have a look at that and come back to us on it?

Mr Macken—Yes, certainly. I am not familiar with that aspect of the current act, I am afraid, but I will certainly look at that. The old requirement used to be that five per cent could in effect seek a court controlled ballot but, as to who now may seek an inquiry, it may well be that one person can do it. Certainly an aggrieved candidate could to it; in that sense one person could certainly do it—so he or she should.

CHAIR—Just quickly coming back to advertising for an election: apart from in the union journal or by direct notification, can you clarify what advertising, if any, you do in the wider general press?

Mr Macken—The usual procedure is that notice of a forthcoming election is inserted in a public newspaper circulating in the area of the branch or in the area of the entity that is conducting the election. The advertisement is inserted so as to appear twice, at least three days apart. In practice it is usually a Saturday, a Wednesday and a Saturday. But it is a matter of choice. It may depend on the circumstances and it may depend on the branch.

Mr LAURIE FERGUSON—Do you have restrictions on financial membership

duration of candidates?

Mr Macken—Virtually no, subject only to two qualifications. One is the time required to enter someone on the rolls. Although, if a person is entered on the rolls subsequent to the beginning of the conduct of an election, usually there will be a supplementary roll and a further ballot paper will go out. The second qualification is that in elections for some full-time officers there is a requirement of a prior period of financial membership, which may be one year or two years—I have forgotten which.

Mr Blandthorn—For national full-time officers on paid salaries, it is a two-year qualification period.

Mr LAURIE FERGUSON—You must have been a financial member for two years?

Mr Blandthorn—Yes.

Mr LAURIE FERGUSON—Is that a fairly current thing with other unions?

Mr Macken—Yes, that is the effect of it. I was going to refer to Leveridges case, which was decided in 1977. It concerned and upheld the validity of a requirement of a two-year period of financial membership as a lawful qualification for election to a full-time office, even in a branch. The issue there was whether the election of a branch secretary could have imposed a requirement that the candidate for that office must have two years financial membership. The Australian Industrial Court unanimously held that that was a lawful requirement in the case of those full-time officers.

Mr LAURIE FERGUSON—It upheld it but, when it comes to the SDA, roughly how many positions—state secretaries, for instance—would require two years?

Mr Blandthorn—Subject to correction, state secretaries, state assistant secretaries and similar national positions.

Mr LAURIE FERGUSON—In regards to voters, is there any requirement bar just being financial at the time?

Mr Macken—No, there are none, but they are subject to what I have said about the period required to get them on the roll. I doubt the lawfulness of any restriction that required that before a person could vote they would have to have a prior period of financial membership. It may be lawful, but if it is the SDA does not take advantage of it.

Mr LAURIE FERGUSON—I queried the registry before you came. I am not sure that I asked the AEC this before, but you might know the answer. Do you have specified individual rules regarding access to the membership list for challenging candidates, or are

they set by the act?

Mr Macken—I am not sure whether it arises under the act or under the rules or both. But the right to inspect membership lists is a right which a member has, and the right to inspect carries with it the right to make copies as a matter of law. So however it is authorised—whether in the rules, in the act or as a matter of legal decision—a member can have access.

Mr LAURIE FERGUSON—Do you have a set period of time between opening nominations and the ballot?

Mr Macken—I am not sure of the answer to that. I think the answer is yes, but whether it is set in the sense of two months applicable across the board I am not sure.

Mr LAURIE FERGUSON—I might ask you to come back to us on the question of what period of time you have for the election campaign and in respect of the rights of people to peruse the list—whether it is the same duration or a short duration. Finally, when you say that if there were a process whereby the membership was compelled to use the AEC, and basically had to pay for it as well, you are saying that maybe the outcome would be that it is open to competition from other forces.

I know that you are not putting this forward as a general desirable outcome, but do you not feel that even if against your general wishes they introduced fees it would be a pretty questionable practice to find alternative organisations that would have the legitimacy to run these ballots? It is all right to say that other people should be able to come into the marketplace, but there is the general integrity of the organisation and respect for it.

Mr Macken—I answer by referring to the New South Wales statutory experience. Up there, elections must be officially conducted, and I would imagine generally by the state electoral commission—I am now referring to New South Wales law. But there is provision for exemption and, where an exemption is granted, the Industrial Registrar can choose some other person, from a panel of persons, to conduct the election. In New South Wales, the position is that the body for whom the election is being conducted has to pay for the cost of the election. By analogy, it would be very hard for parliament to resist a submission that, if you introduce a user-pays system federally, you will get exactly the same development. People will say, 'Why should this section of the Public Service have the right to do this?' A large firm of accountants with experience of conducting company elections or something like that might well say, 'We would like to tender for that, too.'

Mr LAURIE FERGUSON—What kind of people are on this panel?

Mr Macken—I cannot tell you that. I do not know. I simply know of the statutory provision in the Industrial Relations Act (NSW) 1996 that provides for the Industrial Registrar to approve the conduct of elections by an officially appointed returning officer

other than the state electoral commission.

Mr LAURIE FERGUSON—I am thinking about the NRMA controversy—do you know whether that would apply to them? You know there is a constant fiasco inside the NRMA in New South Wales? Do those provisions apply to their elections?

Mr Macken—Firstly, I do not know and, secondly, I would have no competence at all to express any opinion on it, even if I had a suspicion as to what the reality was.

Mr McDOUGALL—I would like to go a little further. You have raised the interesting point there that a member of the SDA is entitled not only to peruse but to obtain a copy of the total membership list. Are there any restrictions as to what a member can do with those lists?

Mr Macken—I do not see that there could be any restriction. There are none in the rules. There is none in the act. I cannot see how there could be any such restriction at law.

Mr McDOUGALL—I raise the question because it has been put to me—I do not know whether it has been put to the committee yet—that maybe this committee should be considering other organisations being subject to AEC controlled elections—and possibly even sporting organisations. To my knowledge, I know it is a practice within some of those organisations that membership lists of individuals are not given out. Because the organisation has a restriction on where those lists can be used and what for, that prompted me to ask the question. So a member could take your list and use it for campaigning or election purposes or he could go off and sell your list?

Mr Macken—I have never considered the possibility, but an analogy—

Mr GRIFFIN—Who would want it—no offence?

CHAIR—You would be amazed.

Mr Macken—Can I remind the committee of the provision in the Corporations Law that any member of a company is entitled to ask for—provided he or she pays for it—a list of the members, but usually subject to an undertaking that it will not be used other than in relation to the affairs of the corporation.

CHAIR—Thank you very much for your attendance this morning. Will you send through to the secretariat the information about those matters that have been raised?

Mr Macken—Certainly. I was about to ask that. Thank you very much.

[11.31 a.m.]

BARKLAMB, Mr Scott Cameron, Labour Relations Adviser, Australian Chamber of Commerce and Industry, 55 Exhibition Street, Melbourne, Victoria 3000

HAMILTON, Mr Reginald Sydney, Manager, Labour Relations, Australian Chamber of Commerce and Industry, 55 Exhibition Street, Melbourne, Victoria 3000

NOAKES, Mr Bryan Maxwell, Executive Director, Australian Chamber of Commerce and Industry, 55 Exhibition Street, Melbourne, Victoria 3000

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

Mr Noakes—No, there are not, Mr Chairman, but I would seek to make some comments.

CHAIR—I was going to ask whether you would like to make an opening statement before we proceed to questions.

Mr Noakes—Yes, thank you. Could I firstly tender a membership list of the Australian Chamber of Commerce and Industry. We omitted to attach that to our submission.

CHAIR—Thank you. Is it the wish of the committee that that list be incorporated in *Hansard*? There being no objection, it is so ordered.

The list read as follows—

Mr Noakes—The purpose of tendering that membership list is to indicate the breadth of the membership of ACCI. There are at the present time 36 member organisations. Between them they represent, as we have said in our submission, over 350,000 individual businesses in Australia. It is a very wide range of members which cover all states and territories in Australia and virtually all industry sectors. The membership also covers all sizes of employers, from the very largest to the smallest.

I should also say in relation to that membership list that only a small minority of the members are registered organisations and, therefore, come within the requirements of the workplace relations act as to industrial elections. Only eight of those 36 members are registered organisations. I think that is a proper reflection of the fact that throughout this country the vast majority of employer and business organisations are not registered organisations. It is only a minority of the employer and business organisations which are registered under the workplace relations act. That, of course, is in sharp contrast to the position so far as organisations of employees are concerned. Virtually all organisations of employees which seek to operate within the federal jurisdiction are in fact registered under the workplace relations act. So there are quite different considerations which apply to organisations of employees, as against organisations of employers.

The other important point I think I should make in that general context is that it is extremely rare for an election with an employer organisation to be challenged. I am not aware of any circumstance in which that has happened in my experience. Again, that is in sharp contrast with the position within organisations of employees where challenges to elections occur quite frequently.

As we said in our submission, employer organisations, despite their predominantly non-registered status, do have a significant interest in the electoral affairs of registered organisations of employees. It is important, in so far as employers are concerned, that the internal affairs of organisations of employees are conducted democratically and that any disputes within those organisations of employees are settled effectively and in a manner which does not lead to industrial disruption. I think that is a clear position which we have had for a long time.

We have made a relatively brief submission, Mr Chairman and members of the committee, and we have come to a number of conclusions, which are at the end of our written submission. On reflection, perhaps we have put too great an emphasis on the question of standardisation of rules for the conduct of industrial elections. It seemed to us that there are significant practical limits to the extent to which standardisation could or should be sought. As we have said, in the body of the submission there is a number of objectives which should be pursued in the event that standardisation was sought, and those are on pages 2 and 3.

We said that exemptions from the requirement to have the Australian Electoral Commission conduct elections must continue to be available. We think it is important to

have that exemption requirement. We think there should be some limitation on the right to challenge elections conducted by the AEC. In other words, there should be a strong presumption that, if they have been conducted by the AEC, they have been conducted properly. We note—I think it is contained in one of the other submissions that I have read—that it is only a very small minority of AEC conducted elections which have been subject to subsequent challenge.

We believe that the cost of elections conducted by the AEC should continue to be met by the Commonwealth and we think that cost minimisation considerations should not have the consequence of diminishing the role of the AEC. We have, however, suggested that the AEC could perhaps offer some type of consultancy services on a fee for service basis which might assist organisations to prepare themselves for an application to secure exemption.

We also made the point that there are some special considerations which will need to be given to enterprise based unions. This is the new provision in the workplace relations act which allows enterprise based unions under certain conditions—one of which is that they must have 50 members or more, and obviously from their very nature they are going to be smaller rather than larger unions—some special considerations as regards the ability of unions of that size to conduct elections. It may very well be that if there is an extremely large number of such unions it would place some burden on the AEC in conducting elections for so many unions. But that is a matter that is probably way in the future. We would not see a dramatic take-up of the option for enterprise unions. We think that that will be a slow development. That is all I want to say by way of introduction. I am happy to try to answer any questions.

CHAIR—This morning the Australian Industrial Registry provided us with a list of organisations which carry exemptions under section 213 of the workplace relations act. By far and away the majority of those that have exemptions are employer as opposed to employee organisations and some of them are clearly members of your organisation as well. In your experience is there any particular trend in the types of organisations—of your members and similar sorts of organisations—that have those exemptions?

Mr Noakes—No, we are not aware of any particular trend. It is a matter for decision by each organisation. In the main I think that they would seek exemptions.

CHAIR—Is it more likely that the smaller organisations will have exemptions rather than the larger ones?

Mr Noakes—It is possible, but I could not be certain. I think that some of the very large ones have exemptions.

CHAIR—They do, yes. There is a number of quite obvious small ones, but I am trying to get some idea whether that exemption aspect of it is working appropriately or not.

Mr Noakes—It may have something to do with the character of the organisation, its geographical spread and the numbers of member companies that it has.

Mr McDOUGALL—Your submission concludes by saying that there should be standardised rules for the conduct of industrial elections. Obviously provided that these resulted in savings and that the flexibility of the current system was not impeded in any way, what is the main reason why you feel that standardisation would be of benefit?

Mr Noakes—As I indicated in my opening comments, we believe that there would be limits to the extent to which standardisation could be achieved. There are already requirements set down in the workplace relations act. To go too far beyond those existing requirements may result in over-regulation and over-intrusion into the affairs of the organisation. It is possible that some further provisions could be set out in the act. I think, from memory, that the submission by the AEC itself makes some suggestions in that respect, without going too far.

I think the concept of standardisation does have some superficial attraction but there seemed to us to be some limits to further standardisation if the other objectives which we have referred to in the submission are to be achieved. In that context, we would say that one of the most important ones is maintaining the democratic nature of the organisation and its right to set its own rules, provided that the public interest considerations are satisfied. In other words, if the organisation's rules meet the tests of accountability and democratic rights of the members, there will be de facto limits to which further prescription of those rules could be imposed.

Mr McDOUGALL—Your submission also argues that there should be further restrictions placed on the right to challenge elections. What restrictions do you think would be appropriate?

Mr Noakes—I think we said that in the context of elections run by the AEC itself, if I am correct. Again, as I said in my opening remarks, we believe there ought to be a strong presumption that, if the AEC conducts an election, it has been conducted properly and therefore there should be limits to the extent to which it can be challenged. As a matter of law, I suppose that is inherently difficult. It seems to be problematic to try to say that the rights of a member or a group of members to challenge at law the results of an election should be circumscribed.

Nevertheless, we would maintain our essential point here that, once the AEC has conducted an election, there should be a presumption that it has been properly conducted and there should be less capacity to challenge that type of election than there is to challenge an election conducted by the organisation itself. It has just been pointed out to me that the AEC itself, I think, has made some suggestions along these lines about the time during which elections might be challenged.

Mr McDOUGALL—Following on from that: at present the right to seek an inquiry into an election is restricted to persons who are members of the organisation concerned or who were members within the preceding 12 months. What would your attitude be to enabling an application for an inquiry also to be able to be made by the AEC, as another method?

Mr Noakes—I do not think we would have any objection to that suggestion.

Mr Hamilton—The overall objectives should be to ensure appropriate conduct of elections in unions and to ensure democratic control. If an AEC role of that sort was consistent with that, then it would be appropriate.

Mr McDOUGALL—So would the ACCI then agree with the AEC that the present six months timelag being reduced to 30 days would be acceptable? Coming back to that time in question, you said that the AEC had made a recommendation. Would you agree with that recommendation of theirs?

Mr Noakes—Yes, we would.

Mr McDOUGALL—This is my final question. You have made also, in your opening comments, the submission that you feel that the AEC should be operating these elections at their cost. As you represent organisations who are professional organisations, and unions represent professional organisations, why should the taxpayer carry the burden of those organisations conducting their elections?

Mr Noakes—Yes, an important question. I think there are public policy considerations. It has been considered by the parliament, and reinforced in the context of the passage of the workplace relations act, that the democratic control of organisations is an important matter of public policy and that the electoral process is a significant element in that question of democratic control. The act requires elections to be conducted by the AEC unless there is an exemption obtained. We support that; we support the continuation of that.

The reason for the provision in the legislation is that it has been considered that organisations of employees and organisations of employers—important institutions—have considerable influence in this country and that the consequences of a lack of democratic control, particularly in cases of organisations of employees, can be quite serious. They are serious not only for the members of the organisation but also for the employers concerned, as I indicated in my opening comments, and for the community generally. It can have a significant effect on the community if organisations are not democratically controlled. It is for those reasons that the provisions in the act have been adopted. That being so, it does not seem to us to be inconsistent for the Australian Electoral Commission to carry the cost of carrying out the elections which organisations are required to have conducted by the AEC. I think that is the crux of the issue.

Mr Hamilton—There is a degree of acceptance of the interventions to ensure democratic control. There is a degree of acceptance amongst the union movement today which historically did not always exist and it has been a long, slow process of building up to an appropriate level of control to prevent abuses.

Mr LAURIE FERGUSON—Your overwhelming slant has been that they should be settled effectively to avoid industrial disruption. I think the only time you have commented about democratic requirements has been in relation to 'the right of the organisation' to avoid prescription from outside forces on its rules. It would seem to me that there is another player that really does not seem to be getting much emphasis in your submission, and that is the right of individual members, vis-a-vis the organisation. Let's start off with the question of workplace unions. Why should their size be such that the number will be too small to justify AEC run elections for any sustained period? Why isn't there a concern that a lack of AEC supervision of their management, essentially in small workplaces, can lead to essentially undemocratic processes controlled by employers et cetera?

Mr Noakes—We are not arguing one way or the other in that respect. We are simply saying it is a matter to which attention will have to be given. As I said earlier, if there is an explosion in the number of enterprise unions, and all of those unions want to have their elections conducted by the AEC—in other words, they do not seek exemption—then that might be considered to place a much greater burden on the AEC than is placed at the moment by the requirements in the act. It is something that needs to be looked at.

Mr LAURIE FERGUSON—That does not seem to be the point you are making. The slant seems to be more that perhaps the AEC should not have a long-term involvement in these organisations. That seems to be what your words say:

Such organisations may have as few as 50 members, a number too small to justify AEC-run elections for any sustained period.

Mr Noakes—That is consistent with what I have been saying. On the next page we say that it is important to ensure that these organisations are run properly and remain free of outside manipulation or control and that there could be a code of practice adopted which would fast-track them into exemptions. In other words, they are not going to have the resources that larger organisations would have to develop their internal processes to the point where they would be easily able to obtain an exemption. So they may need assistance to prepare them to the point where their internal processes are sufficient to secure an exemption from the election processes.

Mr LAURIE FERGUSON—In other words, you are not putting to us that their small size should basically reduce AEC supervision of their internal affairs?

Mr Noakes—No; we are not saying that that is a necessary consequence. What I

am saying is that obviously over the years if we had 10,000 or 20,000 of these unions all seeking the AEC to conduct their elections then that may put quite a different set of questions about the role of the AEC and the cost of the AEC running these elections.

Mr LAURIE FERGUSON—Do you see any good reason why the restriction that people have to be financial for 12 months to challenge union ballots should remain?

Mr Noakes—It is not a matter we have given any thought to.

Mr LAURIE FERGUSON—Was there any logical reason why someone should have to be in for 12 months to challenge a ballot that affects their affairs or their workplace situation?

Mr Noakes—I must say that I have some personal reservations about whether individuals should be able to challenge ballots or whether there should be a requirement for a number of individuals. It seems to me that, if an organisation has 200,000 members, to say that any one of those 200,000 can challenge a ballot may be going a little too far.

CHAIR—What if the individual is an aggrieved candidate?

Mr Noakes—They should not have any difficulty then in securing 100 persons to support them.

Mr LAURIE FERGUSON—I think you have been around long enough to know that people can be intimidated in the workplace with regards to challenging. So you cannot see any reason why someone should have to be in for 12 months to challenge the ballot?

Mr Noakes—On the face of it I cannot.

Mr Hamilton—Our overall concern has been, firstly, to ensure democratic control of unions—we have stressed that repeatedly from the start—and, secondly, to ensure that costs are managed efficiently. That is why we have proposed suggestions on limiting review of elections. The issue of the 12-month period may be a rather technical requirement. I have wondered about that myself in the past.

Mr LAURIE FERGUSON—The SDA gave evidence that they do not allow it. Reality around the place is that some organisations have a significant number of people registered to workplace addresses rather than their private residences. Do you think that is a desirable situation, their registered membership address is their workplace? The most common instance is the liquor industry, clubs.

Mr Noakes—It is not a matter that we have thought about. Is it relevant to the role of the AEC?

Mr LAURIE FERGUSON—I think it could be. I think if one is in a situation where a large number of people are under false names because of taxation reasons and they have their address registered to a particular club and someone can go around picking up 30 ballot papers at a club—

Mr Hamilton—The key issue is democratic control by the membership. If these people are genuinely members, then that should be the criterion for electoral purposes. Other issues such as taxation and so on are issues to be dealt with under other laws.

Mr LAURIE FERGUSON—I am not worried about the taxation aspect myself.

Mr Hamilton—If we are here focusing on democratic control by the members, I suppose it is a matter for the members how they identify their address. It is quite common, for other purposes, to give a work address, unless there is some overwhelming reason why that should not be allowed for other reasons.

Mr LAURIE FERGUSON—You cannot see a problem there?

Mr Hamilton—Not under democratic control.

Mr Noakes—Are you suggesting the act should make some prescription about this?

Mr LAURIE FERGUSON—That might be one outcome.

Mr Hamilton—Why? If they are genuinely members and there is no coercion and there is no breach of the act in terms of freedom of association requirements and the like—

Mr LAURIE FERGUSON—Would it be desirable in Australian elections as such for people to register at places other than their home address?

Mr Hamilton—I suppose in general elections there is the workplace address. In the case of industrial organisations there is a clear work connection, isn't there? These people are employees and it is a requirement that they be eligible as employees before they can join these relevant unions. So there is a connection to the workplace there in respect of these elections which may not exist in, say, a local council election, I suppose.

Mr Noakes—I think what would concern us would be if there were over-detailed regulation of the internal affairs of organisations in the act. The world is replete with circumstances in which governments have excessively regulated and controlled the affairs of organisations through legislation and therefore affected the free functioning of those organisations. We would be concerned about proposals which sought to impose a high degree of regulation on the affairs of organisations.

CHAIR—I guess the issue of home address that was raised is in relation to a postal ballot being conducted. The STA gave the view, for instance, that the reason that they basically have it mandatory that people have a home address is that many of their members are part-time workers and, if their registered address is the workplace, they very often are not at work because they are part time. I think it has been suggested not so much for further regulation but to try to limit the capacity for electoral abuse.

Mr Noakes—That is a matter for their rules and that may be a particular characteristic of that organisation that has a lot of part-time employment.

Mr Hamilton—Can they deal with that issue through their own rules if there is a need to?

CHAIR—They currently do.

Mr Hamilton—So that is appropriately dealt with through that mechanism—

CHAIR—But it is not necessarily the case with other organisations. That is why we are pursuing what views groups have with regard to this.

Mr LAURIE FERGUSON—Why couldn't we have a situation where this is possibly so widespread that the leadership of the organisation is to some degree determined by that facet and therefore internal reform is very difficult?

Mr Hamilton—I suppose that is a very important question of fact. If you find there is a serious problem there, that is an issue of fact which depends on the evidence. But there are already mechanisms, aren't there, in the act for addressing rules which are barriers to proper democratic control. I cannot find them immediately, but there is a scope there for rules which do have the effect of interfering with proper democratic control to be reviewed and challenged; aren't there? I suppose a further question would be: is that mechanism sufficient to deal with the issue raised by the STA? I am afraid I am not in a position to answer that very difficult question of fact, which you will have to answer, I suppose.

Mr COBB—You talk about internal union problems caused by electoral difficulties rebounding on employers. Could you just give us a couple of examples of where that happens?

Mr Noakes—I think you wouldn't have to go past the construction industry to see where disputes during and after elections have had a considerable impact on the industry and on the employers within the industry. That has been a long-running problem for many years.

Mr COBB—So what are you talking about: union officials flexing a bit of muscle

to garner support, calling unnecessary strikes and difficulties?

Mr Noakes—Absolutely.

Mr Hamilton—Making claims and using those claims, which are perhaps of a very high nature, to promote their candidacy.

Mr Noakes—And then claiming that the ballot was irregular and promoting disputation on that basis.

Mr COBB—What suggestions, if any, do you put forward to lessen that impact?

Mr Noakes—I do not know whether I have any particular suggestions, at least not any that could be considered by this committee. Certainly the maintenance of the requirement for the elections to be conducted by the AEC is an important safeguard. The maintenance of the limitations on the ability to secure an exemption has to satisfy the registrar that it is a proper exemption. While the AEC is conducting the elections, that is one of the major safeguards against those sorts of problems.

Mr Hamilton—It has been a long, slow, historical process to build up the existing system we have and the acceptance of that system of controlling the internal affairs of unions in relation to democratic control. It is important that that not be undermined. There have been periods in our history where abuses were enormous and were a massive public problem. Historically, some of the legislation after World War II was a response to massive problems and massive irregularities.

Mr COBB—What sorts of things are you talking about?

Mr Hamilton—There were massive incidents of electoral fraud. Over the years the legislation has been incrementally developed, and acceptance of that legislation has been incrementally developed. For example, conductive elections by the AEC are a degree of interference in the internal affairs of unions which seems to have some degree of acceptance now amongst unions, but that would not have been the case quite a few decades ago.

Mr COBB—Do you know of any instances now which you think are irregular or undesirable or fraudulent?

Mr Hamilton—There are a lot of allegations and there is some evidence. I am not in a position to comment on that.

Mr COBB—Were these with AEC run elections?

Mr Hamilton—I do not think I can take it any further than that.

Mr GRIFFIN—In your experience, what you are saying is that there are fewer allegations around about the conduct of unions now than there were 30 or 40 years ago. The development of legislation and the AEC's involvement are part of the reason—

Mr Hamilton—The legislation does seem to play a very constructive role now which was not the case after World War II. It is important that we maintain whatever positive benefits we have had from that legislation. I think there have been a lot of positive benefits from it. It is worth while remembering the situation that existed before the current legislation was gradually brought into being.

CHAIR—Most applications to courts for inquiries into various industrial elections relate to things like eligibility to vote or to stand. Some might say that they are not really criminal activities, although I think in some cases there are probably grey areas.

Mr GRIFFIN—I would like a clarification on that, because I am not quite sure what you mean.

CHAIR—I think there can be some debate about when a matter related to eligibility to stand or to vote cannot be classified as criminal.

Mr GRIFFIN—Can you give any examples? It is a pretty amazing allegation, I think.

CHAIR—I did not make an allegation.

Mr GRIFFIN—A statement then.

CHAIR—I said that it could be open for debate as to the intent behind people's actions. I am sure that lawyers could argue all day about this. I do not think it is a responsibility of the committee to do that. I am not making any particular allegations; I am just saying that it is a matter that could be debated at some length.

Mr GRIFFIN—Maybe we had better debate it at some length at some stage.

CHAIR—I am happy to do that. There is a suggestion that some of those eligibility matters to vote or stand for office should be handled by a judicial registrar or industrial registrar rather than the courts. Do you have a view on that?

Mr Noakes—You are suggesting the challenges on particular issues may be dealt with by a judicial registrar rather than—

CHAIR—Rather than going through a Federal Court process.

Mr Hamilton—If the net result is that these matters are dealt with more quickly

and at less cost—as is sometimes the case in using a commission process, a tribunal process, rather than a court process—then there may be some benefit in it.

CHAIR—That is the suggestion, because of the cost of court proceedings, particularly if it is very clear that we are not talking about a criminal matter—whether it could be handled by a lower court, for want of a better term.

Mr Hamilton—Some of those issues are already dealt with by the Industrial Relations Commission. I suppose it might be appropriate.

CHAIR—If I could just come back to the cost to the AEC: your argument is basically that this is a requirement under the act, therefore the AEC should cover that cost. There are many things that organisations, businesses et cetera have to adhere to under legislation where there is a fee for service involved, so it would not be an unusual situation in that sense. But you said in your introduction that very few elections are contested. So, from a cost point of view, the cost to members in the organisation would be fairly minimal.

Mr Noakes—No, I said that very few elections conducted by the AEC are contested. I think, from memory, the figure is about two per cent.

Mr LAURIE FERGUSON—The SDA made brief reference to a situation apparently in New South Wales where there is a panel as an alternative to the AEC. Do you know anything about that?

Mr Hamilton—A panel?

Mr LAURIE FERGUSON—Apparently there is a panel that you can get to carry an election out.

Mr Hamilton—These are the registration requirements under the New South Wales state system, are they?

Mr LAURIE FERGUSON—Apparently—they did not say.

Mr Hamilton—It is worth mentioning that a lot of employer associations are registered under state systems—they are not registered federally. There is that dual registration system.

Mr LAURIE FERGUSON—If fee for service came in, would you find it desirable for people to have the option of hiring an accountancy firm or some other organisation to run their elections rather than the AEC? Do you think it would undermine the legitimacy of the system?

Mr Noakes—I would prefer to have the AEC still involved—

Mr LAURIE FERGUSON—Monopolising.

Mr Noakes—in elections. I think the AEC has the capacity and the reputation, which we would want to see maintained.

Mr McDOUGALL—We have had evidence that in some cases as few as 30 per cent of people vote in an election. Can I ask a very leading question. I do not know how the ACCI elects its officers. How do you elect your officers and what is your percentage of voter turnout?

Mr Noakes—It is a very simple process because, as I indicated, we have only 36 member organisations. If there is a vote, it would be by only those 36 organisations. It does not often happen that there is in fact a vote; usually the positions are not contested.

Mr McDOUGALL—So you work on a consensus basis?

Mr Noakes—I can remember two occasions in the last five years when a particular position was contested; but, apart from that, they are uncontested.

CHAIR—Thank you very much for your evidence today.

[12.27 p.m.]

QUIRK, Mr Mark James, National Manager, Human Resources, Australian Chamber of Manufactures, 380 St Kilda Road, Melbourne, Victoria 3004

WATCHORN, Mr Barry John, Director, Australian Chamber of Manufactures, GPO Box 1469N, Melbourne, Victoria

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

Mr Watchorn—No, Mr Chairman.

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

Mr Watchorn—Perhaps, Mr Chairman, I could briefly go through the submission, which itself is not extensive. As the committee would have noted, we have not gone into any matters of detail other than those which have direct implications for the Australian Chamber of Manufactures as an organisation of employers registered under the act. We have not volunteered any views about the impact of the legislation in relation to unions other than to say that some of the provisions of the act which apply to registered organisations of employers have their origins more particularly in concerns of government to apply democratic and other measures in relation to the affairs of unions. Thus, we have, if you like, concentrated on our own particular view of the knitting—that is, the impact of some of the changes implicit in the terms of reference of the committee on us as an employer organisation—while noting that there are implications far beyond our own situation.

I should say at once that we as an organisation have had from time to time contested elections, but my recollection is that there have been three in the past 15 years. So it has not exactly been a battlefield for power and influence, if you like. There have been one or two contested positions in some cases and a fairly healthy competition for positions in another election. But, by and large, that has been our experience and in all cases, of course, the elections have been conducted by the Electoral Commission. So I think perhaps that is enough; the submission, I think, speaks for itself on those issues.

CHAIR—Can I ask you how many members you have?

Mr Watchorn—If I remember rightly, in terms of voting members, it is of the order of 4,000 to 4,500 as at present.

CHAIR—So that is 4,500 organisations, businesses?

Mr Watchorn—Yes, companies. The way the organisation is structured—

CHAIR—Yes, you might just describe how the organisation is structured.

Mr Watchorn—We are an organisation of employers in or in connection with manufacturing industries of all kinds. To be a member of the organisation the company or the partnership or the individual must fit the description of a bona fide Australian manufacturer. So it is confined to manufacturers and it covers the broad church of manufacturing right across the board in this country.

For the purposes of the chamber—and this has particular reference to the electoral process—each member must nominate a representative of the company to be its representative for the chamber's purposes. It is only the nominated representatives of those members who can nominate a person to be a candidate for a position of office-bearer in our organisation, and only such a nominated representative can be a candidate. So, in broad terms, without going into the excessive detail of the way in which our council is structured, that is the way it works. Membership carries with it an obligation to nominate a specific representative. Only those representatives may nominate or be candidates in any election under our constitution and rules.

Mr COBB—You do not happen to have a list of member organisations?

Mr Watchorn—With the numbers we have, we are required to keep a computer list of the members. As I say, that runs into the thousands. We certainly have a list of our council; there are 22 positions. Yes, we are obliged under the legislation to keep a list of the members of the organisation and who their nominated representatives are. That is an obligation imposed on us under the act.

Mr COBB—I am just trying to get an accurate handle on who you are representing. I realise in broad terms it is manufacturing—but just a simple list of the 20 or 50 or whatever it is. It is not groupings of firms, it is individual firms?

Mr Watchorn—It is individual firms—companies, firms and individuals. I think it is fair to say that our membership is a cross-section of Australian manufacturing industry in that probably 80 to 85 per cent would have 35 employees or fewer.

Mr COBB—So roughly how many employees would be represented by—

Mr Watchorn—I think it is between 400,000 and 500,000 employees in rough

terms. It is rather difficult to be precise in these estimations, but that is the ballpark figure.

Mr McDOUGALL—How many of your organisation's members are members of other organisations?

Mr Watchorn—There would be some overlap, Mr McDougall.

Mr McDOUGALL—Have you ever done any stats on it to find out?

Mr Watchorn—Not for some years. I recall that probably about 10 years ago we had occasion to look at this in the context of the metal industry award. We figured that there was a fairly large overlap in terms of dual membership with, for example, ACM and MTIA—Metal Trades Industry Association. I think that also would be true in Victoria; perhaps there would be some dual membership with VECCI, and perhaps in New South Wales with the Australian Business Chamber.

I think it is probably true to say, though, that in recent years companies have been looking more and more to the bottom line, examining which organisations they belong to. The old ethic, if you like, of wanting to belong to an organisation—to put one's bit back into the community—has suffered a bit at the instigation of those who look at that bottom line with great enthusiasm and interest.

My guess would be that the order of dual membership of our organisation with others has gone down fairly significantly. But I would have thought that in the metal industry award area there may have been about 15 per cent dual membership back then. Again, I believe it would have slipped by now.

Mr McDOUGALL—You mentioned that you have had a couple of challenging elections over the years. What percentage of your 4,500 members vote?

Mr Watchorn—The numbers were very small, if I remember rightly, from the last contested election.

Mr McDOUGALL—Just in general as well.

Mr Watchorn—I am trying to get a handle on some of those. In 1992 it was a substantially contested election with everybody up. On the previous occasions that are within my memory, only one or two positions were contested. Not the totality of the membership would have been required to vote in those other two instances. My recollection is that the voting was somewhat in excess of 10 per cent but not more than 15 per cent when the crunch came in 1992. That is a recollection. I could not be absolutely precise as to how many actually voted in that election.

CHAIR—So it is quite low.

Mr Watchorn—Quite low. I think the problem employer organisations have from time to time is to actually get people to get up and put in. It is not perceived to have quite the cachet or the importance that office in a union might have. But that is a gratuitous observation from the outside, of course.

Mr GRIFFIN—You mentioned that your membership is about 4,500 now. What was it 10 years ago?

Mr Watchorn—It has probably slipped marginally. Again, it is part of that process, if you like, of constantly reviewing the bottom line within companies and rationalising membership. For example, saying that we belong to MTIA, VECCI and ACM is stupid. We have to rationalise or cut back to one or two at max.

There has been an impact on that. But on the other hand, despite the fairly significant truncation in the manufacturing sector in the Australian economy, there has been a reasonable take-up of new members. At the end of the day, we are all conscious of the fact that some companies—new companies—do not see out the distance. They open and close, particularly in the small business area. But it has not seen a significant downward influence on our membership—although it has been down to some extent.

Mr COBB—You seem to argue against any further standardisation of rules for elections. Also, if I read it correctly, you would perhaps like the exemptions from postal ballots expanded. Can you just enlarge on that a bit as to the criteria you would like to see for exemptions.

Mr Watchorn—In a former life I was responsible for the legislation under the then C and A Act, because I was a senior officer of the department at the time. So I bear some responsibility at least for some of the thinking that went into the drafting of the legislation in the mid- to late 1970s and early 1980s.

I suppose the concern we have is that there has been a fairly substantial move towards control of uniformity under the legislation with regard to the rules of organisations, the way in which elections are conducted and so on. We feel that our constitution and rules reflect the sort of structure that is appropriate to us. We have had to change the way in which elections were conducted as a result of the legislation from 1973 onwards. So we have had to adapt to that and comply with the requirements for the legislation with regard to secret ballots et cetera.

Our concern is that if there is more and more standardisation about the way in which elections must be conducted, organisations are going to lose some of their own individuality. For example, we have an arrangement, fairly recently introduced, whereby 50 per cent of our committee of management comes up for rotation every year. They have a two-year term, but half go out to every year.

We have a system in which you have a fruit salad basis of representation. Some members of the council are elected to represent the generality of the membership; others are elected to represent specific groups of the membership based on either the region—that is, the decentralised location of members—or the industry they are in. We have three different groups.

If we get any more closing in of the ground rules, some of that idiosyncratic approach that reflects the needs and culture of the organisation stands, in our view, to be inhibited. We simply question whether that is a good thing.

Mr COBB—Did your comments just apply to your organisation or are you also extending that to trade union elections as well?

Mr Watchorn—The reality is that you can have it both ways. You have to say that what is good for the goose is good for the gander, even though from time to time we would argue that what has been landed on employers is grossly unnecessary, considering the realities of their situation compared with unions. Nevertheless, we have copped it as we have gone along and that is the way in which, basically, governments have approached the matter. So I think the answer to that is yes.

If, however, the approach were to be that, simply, if you like in mechanical terms, there should be a greater degree of standardisation of what is required in an election process—procedures, for example, to be followed by the Electoral Commission—I suppose to the extent that it did not interfere with the fundamentals of an organisation's structure and character, we could not argue with that.

CHAIR—If the AEC, for instance, produced a set of model rules for conducting elections—there might be half-a-dozen different models—and then told organisations to choose the model which best suited them, would you have a problem with that? That goes some way towards some sort of standardisation as far as the AEC in concerned.

Mr Watchorn—Look at it this way: we have in our rules a rather extensive provision which say that within 30 days of 1 February each year nominations will be called et cetera for various provisions. Then there are provisions about who does what—scrutineers et cetera. I suppose one could say that they are not, strictly speaking, absolutely necessarily immutable or relevant to us as an organisation in that they are largely procedural and, if there were essential procedural choices open to us, that would not necessarily pose any major problems. It is, if you like, changes of substance that would concern us more than anything else.

Mr LAURIE FERGUSON—You have indicated that you would like to see provisions with regard to postal ballots eased. What is your current situation? How would you conduct ballots other than by postal ballots? You do not elect at a conference, do you?

Mr Watchorn—No. I will take you through the way we function. The members of our council are elected when required by secret postal ballot of the relevant parts of the membership. That is, if there is a contest for the position of a metals councillor, a consumer products councillor or a textiles, clothing and footwear councillor, the members who have been allocated to that particular industry or group get to vote for that contested vacancy. If it is a general councillor, then the members in the state concerned, as a generality, vote for that position. In essence, we go through the processes of writing to the Industrial Registrar, asking him to make arrangements for the calling of the elections. He passes them onto the Electoral Commission, which talks to us and asks, 'What looks like a reasonable time to call for nominations?' We give advice and talk about the dates on which our journal goes out to our members, which is the usual basis for notice of calling for nominations—

Mr LAURIE FERGUSON—How often does the journal go out?

Mr Watchorn—The journal goes out once a month. We try to time it so there is plenty of time for that, and of course the Electoral Commission takes that into account. So nominations are called. They must go to the Electoral Commission by the relevant time as nominated by him, taking account of our rules. If there is a contested candidacy, we are required to provide the relevant material from our membership records to the Electoral Commission, which then handles the election in the normal way by postal ballot. Those postal ballots are sent to the nominated representatives—that is, the persons who are entitled to vote—at their recorded address in accordance with our register of members.

Mr LAURIE FERGUSON—I did not get a chance to read your submission, but I gathered from the notes that you are advocating looser requirements with regard to postal ballots. What I am getting at is, after all that process, how would the ballot be conducted other than by postal ballot?

Mr Watchorn—To go on from there: as things stand at the moment, once the council is elected, that newly elected council is able to elect the office-bearers—that is, the president, the vice-president, the treasurer et cetera—by secret ballot at a council meeting. So, to that extent, we do have the election of office-bearers by and from the committee of management at a meeting; but that, too, involves the Electoral Commission.

Our rules require the Electoral Commission to, in effect, oversee the conduct of that election if there are contests. The Electoral Commission actually calls for the nominations. If there is a contest, the Electoral Commission must be there to actually conduct the ballot at the council meeting. So far that has not been required.

Mr LAURIE FERGUSON—What I am getting at is what is your problem. Are you saying that ballot should not be controlled by the AEC?

Mr Watchorn—Coming back to it: I guess essentially what we were saying in our

submission was that, if you look at the exemptions which now exist from a secret postal ballot—given that, as a result of a series of legislative amendments, organisations like ours were forced to move to secret ballots from our previous, less formal arrangements—we don't think there are viable exceptions in our circumstances, given the constraints, particularly, I think, about the need for an outcome to result in greater participation or at least the same participation as with a secret ballot. We just think that is of no earthly use to us.

I suppose viewing that in the context that there ought to be some fee for service charged by the Electoral Commission, we simply think that, unless there was some relaxation of that, it is a bit rough. Having landed the constraints on employer organisations such as ours, which move us into the secret postal ballot route, and not providing an effective exemption for us—we do not think it is an effective exemption—we think the proposition that there should be a fee charged for the services of the Electoral Commission is a bit over the odds.

Mr LAURIE FERGUSON—Let's go back to your quote: 'less formal practices'. What were those less formal practices without a postal vote?

Mr Watchorn—If I remember rightly, and it is a long time ago, it was possible for members to actually be elected—

Mr LAURIE FERGUSON—Proxies or something?

Mr Watchorn—at a meeting. I think there was in fact in place at one stage a two-tier electoral college, which would not meet the requirements of the current legislation. So it was a lot less formal. A secret postal ballot was not required; a secret ballot was, if an election was contested, but it could take place at meetings.

Mr LAURIE FERGUSON—Getting back to Mr Cobb's point—and I think we understand your desire not to pay money—if there were this requirement with regard to employee organisations, it is a bit difficult to force them to be controlled by this process and have secret ballots, which they might not even desire either, quite frankly, and for you to be basically exempt and different. It is a bit difficult; isn't it?

Mr Watchorn—I think when I spoke before that I said in effect we have had to cop it. I suppose we will go on copping it. Yes, that is the way governments have acted and it is something we have accepted.

Mr McDOUGALL—I would like to come back to the cost. You are a professional organisation. Your members pay fees to be members of the organisation. Why should the taxpayer pay the bill? You are conducting your business.

Mr Watchorn—I think the response to that is this: the costs would have been a

hell of a lot less had we been able to conduct our elections our own way—that is, in a way not narrowly confined for us by a series of legislative initiatives not directed to problems within our particular organisation or employer organisations generally but within unions in general terms.

Mr McDOUGALL—Isn't it fair, though, to say that there are a lot of government departments—I suppose the ATO is probably the best example: it has got plenty of regulations and requirements that require a fee to go along with it. Why should the election process be exempted when those others are not?

Mr Watchorn—I think the answer is that there cannot be anything much more fundamental to any organisation or body of individuals who join together collectively for a common purpose than having the ability to decide who plays the leadership role from within that body. To the extent that in the past the organisation met the costs of its own election processes before government put the current constraints on the election process, then I think that is fair. But we did not put this regime in place and we do not believe it is appropriate.

It may well be that the Taxation Office does in fact charge people for certain things. The fact is that employer organisations are not-for-profit organisations, and that certainly is the basis upon which ACM operates. We are not in it for profit; we are in it to serve the interests of our members. Every dollar that is charged to us comes out of our members' pockets. That, I think, is the impact on us. It is not a situation of our making.

Mr McDOUGALL—In the case you mentioned—that you advertise only in your monthly magazine for positions—in actual fact is it you that advertises or the AEC?

Mr Watchorn—No, the AEC places the notification in our journal, approves the timing of it and approves, of course, the content.

Mr McDOUGALL—Who pays that?

Mr Watchorn—We pay the cost of that. There is no charge to the AEC for that.

CHAIR—Have you considered applying to the Australian Industrial Registry for exemption under 213, particularly for the second tier election? There are examples where the AEC has conducted the general election for people to be elected, say, to the management of a particular organisation but then, where you have an election of those elected representatives for other positions, they have applied for and obtained exemption under section 213—the second tier one that you mentioned. You say it would require the AEC to conduct it if it were contested. Has there been consideration given to applying for that exemption?

Mr Watchorn—I think the answer to your question is no—there has not been

consideration given to it.

CHAIR—Primarily because you have never had that second tier contested? Is that the—

Mr Watchorn—It has not been a major area of contention over the years. I think the view has been taken that perhaps if there were some contest further down the line that might be considered, but by and large the objectivity and disinterested position of the Electoral Commission is certainly seen as a guarantee that there will not be any problems in relation to the conduct of an election.

Mr GRIFFIN—I think you probably covered this before—I apologise because I had to go outside of the room for another urgent phone call. On the question of costs again, I want to get your basic point on the record in case it was missed before. My understanding from reading your submission is that your basic point is that, where there is compulsion—essentially there is under the legislation but in your view also for good reason in terms of the integrity of the process—around the operation of industrial organisations, both employer and employee, and that has requirements that it places on the organisation in those circumstances, the EC is critical to that process but also the cost ought to be borne by the government because the government has legislated for that requirement to take place.

If the government wants to move away from that, then there ought to be circumstances where there is a potential for organisations to defray their costs accordingly, but you would not support that because you think it gets away from the intention of the legislation in terms of that question of integrity of the process. Is that right?

Mr Watchorn—I think in a nutshell you have got it, Mr Griffin. I suppose to this extent our view would be that we would be quite comfortable conducting our own elections in a manner similar to the way in which they were conducted in the past. That would certainly be at our cost. However, we recognised the prospects of that occurring, given the inevitability of legislation applying equally to unions and to employer organisations. There is just not a practical proposition occurring.

Mr GRIFFIN—Also you would agree that, as an employer organisation, you are quite a large employer organisation with around 4,500 members but, if you were a union, you would be very small.

Mr Watchorn—Yes.

Mr GRIFFIN—Therefore, the question of costs in relation to the unions versus employer organisations is not comparing apples with apples.

Mr Watchorn—Yes.

CHAIR—There being no further questions, I thank you for your attendance here today.

Resolved (on motion by Mr Cobb):

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

Committee adjourned at 1.03 p.m.