



**COMMONWEALTH OF AUSTRALIA**

**JOINT STANDING COMMITTEE ON  
ELECTORAL MATTERS**

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

**CANBERRA**

**Wednesday, 9 April 1997**

**OFFICIAL HANSARD REPORT**

**CANBERRA**

## JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

### Members:

Senator Ferguson (Chair)

Senator Abetz

Senator Chamarette

Senator Chris Evans

Senator Lees

Senator Minchin

Senator Wheelwright

Mr Cobb

Mr Connolly

Mr Griffin

Mr Melham

Mr Swan

Matter referred to the Committee:

Role of the Australian Electoral Commission in conducting industrial elections

**WITNESSES**

**GRAY, Mr Bill, Electoral Commissioner, Australian Electoral Commission,  
PO Box E201, Kingston, Australian Capital Territory 2604 . . . . . 3**

**KERSLAKE, Mr David Arthur, Assistant Commissioner, Industrial Elections,  
Funding and Disclosure, Australian Electoral Commission, West Block,  
Parkes, Australian Capital Territory . . . . . 3**

**LEWIS, Mr Stephen Geoffrey, Director, Industrial Elections, Australian  
Electoral Commission, PO Box E201, Kingston, Australian Capital  
Territory 2604 . . . . . 3**

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

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

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Wednesday, 9 April 1997

Present

Mr Cobb (Chair)

Senator Abetz

Mr Laurie Ferguson

Mr McDougall

The committee met at 10.09 a.m.

Mr Cobb took the chair.

**CHAIR**—I declare open this 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 Electoral Commission. Before we begin, we have received a submission dated 27 March 1997 from Mr Paul Sheehan.

Resolved (on motion by Mr Laurie Ferguson, seconded by Senator Abetz):

That the submission dated 27 March 1997 from Mr Paul Sheehan be authorised for publication.

**CHAIR**—The submission is now a public document. As this is the first hearing of this new inquiry, I would like to say a couple of preliminary words. When you consider that the AEC are now overseeing of the order of 700 of these elections each year and this has been going on for some time, I think it is fair to say that an inquiry into the conduct of these elections is somewhat overdue and will be valuable for everyone.

However, I want to say at the outset that it is my desire that this inquiry not be a witch-hunt into certain trade unions and their elections. I believe this committee will be very constructive in its approach and in the desire to obtain outcomes that will benefit everybody—the ordinary members of the trade unions, the trade unions themselves and the general public. I say the general public because I think it is highly desirable that the general public as well as the ordinary members can have as far as possible confidence in the way these elections are run and in the integrity of the elections. If we come across less than best practices, we will endeavour to make sensible recommendations to correct those matters. I would hope that when this inquiry has concluded, which may be later this year, the committee can look back on it proudly. Without further ado, I call the AEC to give evidence.

[10.11 a.m.]

**GRAY, Mr Bill, Electoral Commissioner, Australian Electoral Commission, PO Box E201, Kingston, Australian Capital Territory 2604**

**KERSLAKE, Mr David Arthur, Assistant Commissioner, Industrial Elections, Funding and Disclosure, Australian Electoral Commission, West Block, Parkes, Australian Capital Territory**

**LEWIS, Mr Stephen Geoffrey, Director, Industrial Elections, Australian Electoral Commission, PO Box E201, Kingston, Australian Capital Territory 2604**

**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 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 Gray**—No, Mr Chairman. The submission stands as it was presented to you.

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

**Mr Gray**—Mr Chairman, thank you. Like the committee and as you have just said, we welcome this inquiry. It has been some time that we as an organisation have been conducting a large number of industrial elections. As you identified, on average 700 elections are conducted each year. We do have a long history.

The submission we have prepared is the product, if you like, of consultation within the organisation and the views of those people who have had direct responsibility for the conduct of elections; namely, the returning officers, their directors, their supervisors and others who have responsibilities for the conduct of industrial elections within the AEC. It is, as a consequence, not a submission which finds its way from Canberra only. It is the product of wide consultation within our own organisation and I hope as a consequence will be instructive and assist this committee in coming to conclusions about the way in which the AEC has gone about its business of conducting these industrial elections.

Our submission addresses the terms of reference and identifies some proposals or recommendations which we would make to the committee which we think would be appropriate reform in the conduct of industrial elections. We also identify areas against those terms of reference which clearly raise significant policy questions which I think the committee will have to come to a view upon. We again seek to provide as much

information as we can relevant to those policy issues which I think need to be in front of you and upon which you can then deliberate and no doubt call for information from other sources as well as the AEC.

We have sought to provide some background and history of the development of industrial elections, we have sought to identify the processes which we engage in at this particular time, and we have sought to identify those areas which we believe could and can be improved in terms of the way in which we conduct those elections. Clearly, we are bound by legislation and some of those changes would require amendments to legislation. As a consequence, again, it would be for the committee and the parliament to consider whether or not legislation should be changed to give effect to some of those recommendations.

In addressing the terms of reference we have identified that when it comes to the standardisation of the rules governing the conduct of industrial elections, whilst the AEC itself may have a view that some form of standardisation would be beneficial, there is a limitation, we feel, that must be addressed and considered certainly by the committee in considering standardisation. We have provided legal advice to the committee which emanates from not only within government but also outside government, and those opinions would indicate that there are severe limitations in respect of the standardisation that can apply in the conduct of industrial elections. Those limitations derive from the ILO conventions. We draw those to your attention, and we have given you such information as we have been able to obtain.

We have also looked at the review mechanisms, and we make various comments and indeed suggest some possible changes that could occur which may be less expensive, if you like, than the current review procedures, where everything is taken into courts of law. There may be other methods by which at least cases involving technical issues could be first examined, and hopefully the cost associated with that review could be reduced.

We have also looked at the costs of industrial elections and whether the Commonwealth should continue to meet those costs. Clearly, that is a policy issue of some considerable weight and importance, and it is one which will impact upon the attitude within the community in respect of industrial elections.

The fee for service approach clearly is associated with the costs of conducting elections, and it is an approach which we again make comment upon within our submission and which again will have a significant impact, I think, not only at a policy level but at a public interest level with respect to whether or not the cost of industrial elections should be met by the Commonwealth or be transferred to organisations—both employer and employee.

The AEC have made six recommendations to the committee in relation to the terms of reference. As I said, we recognise that some of those would require legislative change.

As I said, that is a matter about which this committee no doubt will make recommendation of its own accord to the parliament. We would suggest that these areas will require close examination, and of course the views and the advice of the AEC should be supplemented by the views and advice of others who are stakeholders or observers of industrial elections.

Mr Chairman, I do not wish to say more than that other than we, the AEC and our officers stand ready, both now and at any other time that you may call upon us, to provide you with such information and evidence as you see appropriate.

**CHAIR**—Thank you, Mr Gray. I am sure you will be back before us before this inquiry is finished. To begin with, could you give us an idea of how many trade unions you conduct elections for? I know you do 700 a year. There are 126 organisations registered under the workplace relations act—79 employer organisations and 47 trade unions. As I understand it, most of the trade unions have terms of the order of four years. Can we just get a handle on how we arrive at this figure of 700 a year?

**Mr Kerlake**—A lot of those organisations will have conducted branch elections in different states in a particular year. Simply, when you total that you come up with a very large number. I might add that some of those elections end up being contested and some do not.

**CHAIR**—How far down the chain, though, do we come? In some cases you have federal bodies and in others state bodies. What about below that? For example, does a trade union which has, say, 50 workplaces across New South Wales hold smaller elections within those regional areas at all?

**Mr Lewis**—Generally not quite to that extent. Sometimes, as you say, there are federal and state. Others may be organised by divisions. Particularly the larger, amalgamated ones will have industry type divisions, which themselves will be federal and state. So you may have an overall federal and state and then an industry federal and state, for example. If you are talking about, say, the shop steward level, it tends not to go down to that level.

**CHAIR**—What about the employer organisations? How many of those do you conduct?

**Mr Lewis**—How many employers or how many elections?

**CHAIR**—Elections for employer organisations. Are there any? You do not mention that here.

**Mr Gray**—Yes, there are employer organisations. We have identified the number there. It is in our submission. We could get you the detail as to the number of elections



we conduct in any one year in respect of those organisations.

**Mr Lewis**—It does vary from year to year, of course, because they are on election cycles.

**CHAIR**—Is that a relatively low number, though?

**Mr Kerslake**—I think one pertinent point is that a lot of elections are conducted for employer organisations. It is probably fair to say that a greater number are uncontested for employer organisations than for employee organisations. But it also varies considerably according to the organisation's rules.

**Mr Lewis**—Also, a lot of the employer organisations are smaller in size than the unions—smaller in the number of members particularly.

**CHAIR**—Just to be quite clear, though: the trade union bodies are required to have you conduct their elections. That also applies to the employer organisations if it is contested. Do they ask for exemptions on how an election is conducted, similar to trade unions?

**Mr Lewis**—Yes. The legislation is the same for either a union or an employer.

**Mr Kerslake**—Only a small number of both employee and employer organisations actually have obtained exemptions under the act.

**CHAIR**—Just so I have a handle on it: in a typical employer organisation that you conduct an election for, what sorts of numbers of voters are we talking about?

**Mr Lewis**—I could not give you a figure as the size varies too greatly. I do not know that you could give a typical example because they vary from an organisation with, say, 20 members to others like the ACCI which have a large number of members clearly but I do not know how many.

**CHAIR**—So even for those involving as low as 20 members you would still have to oversee that being conducted—

**Mr Lewis**—If they are a registered organisation, yes.

**CHAIR**—Secret postal voting and what have you. It would not take long to count. Just to get a handle on the trade unions: what sorts of numbers of voters are we talking about? What sort of range, from the smallest to the largest, are we talking about?

**Mr Lewis**—The largest would be, say, a national election for one of the big unions, where you could be looking at, in theory, 100,000 or 200,000. I could not give an

exact number for the smallest but in, say, a Northern Territory branch or an ACT branch you would probably be looking at a few dozen. It is that sort of range. Clearly, a branch election or a section election in a smaller state or the territories is much smaller than the national ones, but there can be that sort of range.

**CHAIR**—How do you prepare the rolls of voters for posting the ballot papers to people?

**Mr Kerlake**—The organisation supplies a copy of the roll to the AEC. The secretary of the organisation is required to certify a copy of the roll which is supplied to the AEC. The AEC uses that roll to conduct the election.

**CHAIR**—So when you receive the roll you get a signed statement that it is an up-to-date, full, certified roll and that is usually sufficient?

**Mr Kerlake**—There may be some checks that the AEC is able to conduct to check the roll. For example, we have a computer program called Rollmaker, which enables us to cross-reference names, addresses and so on to look for any inaccuracies or duplications in the roll. But, in general, under the legislation the roll supplied to us is required to be certified by the organisation.

**CHAIR**—In the roll that you get, what addresses of the voting members are listed? Is it workplace, private or a mixture? If it varies, why does it vary?

**Mr Lewis**—If it varies it is because the roll we get depends on the records the organisations keep and their particular electoral rules. Predominantly it is home addresses. They are the ones that are predominantly used. In some cases they will provide both a home and a workplace address. Therefore, you can use a workplace address where you cannot ascertain whether a home address is current but you have a current workplace address. In the overwhelming majority of cases, about 90 per cent, you are looking at home addresses. A specific example is probably the CPSU for the Commonwealth Public Service, which uses workplace addresses.

**Senator ABETZ**—In your submission you suggest that there are some privacy concerns about people having to give their residential address. I can point to it in the submission if you give me sufficient time to find it. I was going to work through the submission but, seeing the matter has come up, I thought it might be an appropriate time to ask the question about why you considered this to be an invasion of privacy, given that the electoral roll usually discloses people's residential address. If somebody does not, for genuine reasons, want to give their residential address, as I understand it a postal address can be given; in other words, a post office box. Whilst I noted some concern about residential addresses, your submission did not seem to explore the opportunity for those people to provide an address which would be other than the actual workplace address, such as a post office box or residential address. I have just been advised that it is

paragraph 3.3.6, where you say:

The AEC believes that to make it compulsory for members to supply a residential address would be an unnecessary invasion of personal privacy.

Whilst I accept that that might be the case, there are alternatives other than simply the residential address. Do you have any commentary on why you came out quite strongly on the privacy aspect? It does not seem to be a concern with the normal electoral roll.

**Mr Kerlake**—In the normal electoral roll people can be silent electors. That takes into account particular privacy or personal reasons why that may be so. That would certainly need to be equally a consideration in the case of industrial elections if you were to—

**Senator ABETZ**—Why can't the same rules apply to federal elections as they do to industrial elections? Why would there be special privacy concerns for industrial elections?

**Mr Kerlake**—I think you are right, Senator, that you could have a legal regime covering that. We are simply drawing attention to the fact that there is that privacy issue which would need to be covered in legislation. It also may then raise a practical issue in terms of there is often much discussion about workplace versus residential addresses. If a lot of members opt, for whatever reason, not to provide their residential address and in effect to remain silent, as it were, as in the Commonwealth roll, that would create practical problems and you would end up having to send it perhaps to the workplace address anyway, and it does not resolve—

**CHAIR**—But surely with silence we are talking about less than one per cent. You said earlier, if I remember correctly, that 90 per cent give a residential address any way.

**Mr Lewis**—In most cases that is the case—the overwhelming majority do go to residential addresses. I was just going to add that one difficulty is that neither a union nor an employer organisation can force anybody to give them their residential address, whereas you tend to know the workplace address because that is where they are represented. We do not make a major point of it because the overwhelming majority of people do provide their residential addresses, so the issue does not arise.

**Mr LAURIE FERGUSON**—When you say the overwhelming majority, you can have instances where that is not the case. There are anecdotal stories like the liquor trades, particularly, and high numbers enrolled at clubs. You could have unions where it is not predominant, couldn't you?

**Mr Lewis**—Sure, that is the case. Although there is a high predominance in the liquor trades, my understanding is that the majority are still home addresses. It is much

higher than for most. It is more than nine out of 10. That can arise.

**Mr LAURIE FERGUSON**—Would you know what the percentage is in the liquor trades?

**Mr Lewis**—Off the top of my head, no, but I can find out for you.

**Mr LAURIE FERGUSON**—I guess there is an angle there, quite frankly, of taxation issues too. Some of these people possibly desire that address for other reasons.

**Mr Lewis**—That is correct.

**CHAIR**—You say for privacy and practical reasons that recourse cannot be had to the Commonwealth electoral roll. Why is that?

**Mr Kerlake**—In relation to the electoral roll there are legal restrictions on access and usage to which the electoral roll can be put. What we are really pointing to there is that we have no legislative basis on which to access. Just because we run industrial elections on the one hand and electoral on the other does not mean that we automatically have a right to use one lot of information for the other. We would need some sort of legislative basis to be able to do that.

**CHAIR**—Is it something that you would like to have? It would seem commonsensical to me at first glance.

**Senator ABETZ**—Is the electoral roll a public document?

**Mr Gray**—It is a public document for the names and addresses for the purposes of the electoral roll. What is being said here is that to the extent that there is any doubt or concern about the use of the roll for the purposes of the conduct of industrial elections, perhaps it ought to be made clear explicitly rather than relied upon implicitly. I think that is the point that we are seeking to make here.

**Senator ABETZ**—I accept and understand that. At face value one would anticipate that if somebody was willing to give their residential address for the Australian electoral roll, anybody could access the public library, get that electoral roll and find out their residential address. It would be somewhat naive of them to think that if they did not give their residential address to the union for an industrial election, nobody would know where they lived.

**Mr Gray**—I think you are right, but I think we also have to draw attention to ensuring that the regime that we operate within is not challengeable. I think that is, frankly, the only point we are seeking to make. You are quite right. If it is accepted, that is all we are trying to put.

**Senator ABETZ**—I was trying to tease out whether there might be any public policy reasons why that should not be allowed, but seeing it is a public document available to everybody—

**Mr Gray**—You will no doubt be aware that you and others do receive complaints from time to time by people who do not realise that the role is as public as it is and that people, who for other reasons then use that information which is not appreciated by the enrolled person, complain and they complain loudly. As a consequence, we are sensitive, and I think we need to.

**Mr Kerlake**—As Mr Gray says, people often do take exception to that. We simply say that we would not want to be in a position of having to try to answer those criticisms that are being addressed to us. We would rather have a legislative basis, if that were considered.

**CHAIR**—You have not made any recommendations around this point, have you? If that is so, I just wonder—perhaps after the meeting—whether you might reflect on the discussion we have had and if you think it is appropriate to add anything to that section, you might come back to us.

**Mr Gray**—We will take that on board.

**CHAIR**—I will just finish off this question of the preparation of the roll of the voters. You get the list. What sort of things trigger the fact that you may wish to check the list to see whether it is proper?

**Mr Kerlake**—It may be that Rollmaker, our computer program, identifies inconsistencies between addresses and things of that order which might raise concerns about the roll. There is provision under organisations' rules for people who may erroneously have been left off the roll to apply to the returning officer and say, 'I am actually financial and should be on the roll.' If we have a large number of complaints from people who have been left off the roll or a large number of complaints that people are on the roll and should not be, those sorts of issues might raise concerns and we may need to make further checks.

**Mr LAURIE FERGUSON**—Does the roll only pick up evidence of people at particular addresses?

**Mr Lewis**—Yes. Often where there is a large commonality of workplace addresses—that happened in the liquor trades—that is identified so that you can then go back and check. That happens in that industry in particular because there is a high turnover of staff. If you suddenly get a whole lot back from one workplace address, you go and check to make sure that everything is okay because sometimes you run on the expectation that because people move around a lot, some will come back.

**CHAIR**—Is that a physical check—a doorknock?

**Mr Lewis**—The computer system is able to identify those and then there is a follow up. One of the things that is done is for the returning officer to check that.

**Mr LAURIE FERGUSON**—So checking can occur at periods other than elections?

**Mr Lewis**—It tends to occur in periods of elections because the rolls are going to change or the membership will change.

**Mr LAURIE FERGUSON**—Let us imagine that you found 150 at Granville RSL Club and the estimate was that about 40 people work there generally. What would happen?

**Mr Lewis**—Clearly, one of the things we would want to do is check which of the people are actually working there. Clearly, in that case there are a whole lot of incorrect addresses, which would mean there are people for whom we are given addresses that are wrong. You then get into the extent of whether the rules say you are still supposed to send them or not, plus a judgmental decision the returning officer would make under section 215. Basically that would be your check—trying to establish who is there and who is not there.

**Senator ABETZ**—Normally you would not conduct an inquiry to check that out. You would just accept at face value that there are, let us say, 150 workers at the Granville RSL Club and you would not bother to initiate an inquiry.

**Mr Lewis**—Not beforehand.

**Senator ABETZ**—Unless somebody alerted you to that situation, you would be none the wiser.

**Mr Kerlake**—We could become alerted. For example, if you have an organisation where there is a large group of itinerant workers and they move around all the time and from 95 per cent of your workplaces you are getting about a 40 or 50 per cent return and then suddenly in this one here there is a 100 per cent return, it may lead you to wonder what was unusual about that particular—

**Senator ABETZ**—Have you ever picked up on those situations of your own volition?

**Mr Kerlake**—Yes.

**Senator ABETZ**—How does that then fit in with the assertion that the AEC does

not have a policing role, which I read in the submission?

**Mr Kerlake**—Can I make a distinction between making prudent checks in the run-up to an election and the AEC becoming police officers and prosecutors and going around conducting, as it were, criminal type investigations, which clearly is not our role. If our concerns were sufficient, that is a matter that we would refer to the AFP. That is the appropriate body to conduct that type of function.

**Senator ABETZ**—Are your people schooled to look out for these possibilities and to try to check up as much as they can as to whether to look at percentage returns from particular workplaces?

**Mr Kerlake**—Yes, they are. They are very alert to that. But, again, I make the point that that is a process that they would only take so far before handing it over to another body.

**Senator ABETZ**—How would you detect it? You send out all the ballot papers and they are then returned. How are you able to identify how many have come from, to use the example, the Granville RSL Club? How are you able to determine that?

**Mr Lewis**—Through the computer system.

**Senator ABETZ**—As a worker, I don't have to sign off, do I?

**Mr Kerlake**—It would vary. You raise an interesting point—it depends upon the rules. If there is a declaration voting system in place—

**Senator ABETZ**—It is easier.

**Mr Kerlake**—It is much easier. That is one of the points that we have raised. If nothing else, one of the things that the AEC would like to come out of this process is some form of uniform declaration voting.

**Senator ABETZ**—I think you made a very strong point in your submission to help overcome that. Where you do not have declaration voting, how would you pick it up?

**Mr Lewis**—Because it is clearly one person, one vote, you have to mark off who votes, just as you do in a federal election. So what happens is that because the computer system is used, one of the things you can have the program do is bring forward and you can match names and addresses and a large proportion of addresses comes out as having voted. That gives the returning officer something to go back and check.

**Senator ABETZ**—Would you do that as a matter of course?

**Mr Kerslake**—Normally it would depend upon the organisations rules as to how we conduct the ballot. Some organisations rules provide for specific checks. The returning officer does have a discretion under section 215 to avoid an irregularity to take further appropriate action. That would be very much a matter for a judgment by the returning officer, faced with the facts before him.

**Mr Lewis**—On that particular point, because in some organisations a number of workplace addresses are so small, the likelihood is very small.

**CHAIR**—What sort of percentage vote is there in trade unions? It is voluntary voting. What sort of range do we get?

**Mr Kerslake**—On average, about 30 to 35 per cent is the normal participation rate in industrial elections.

**CHAIR**—And some unions traditionally vote higher than others?

**Mr Kerslake**—Yes. There are a couple of very exceptional cases where some organisations run attendance ballots in a very small number of workplaces where it is clearly much easier. You vote on the way in or out of work rather than having to post the ballot. That results in a high participation rate in those particular cases. It can be up to around 70 per cent. I would not want to give the impression from that, though, that attendance ballots are a great thing to increase participation rates. It depends upon the organisation and how it is structured.

**Mr McDOUGALL**—How does that compare with employer organisations? You said it was 30 to 35 per cent for industrial elections.

**Mr Kerslake**—It is about the same. The only point that I would make is that generally there would be more uncontested elections in employer organisations.

**Mr McDOUGALL**—I come back to that question that we were talking about before. Your submission noted that, when appropriate, you alert organisations to any ambiguous or difficult rules and ask the organisations if they would review them, which certainly could happen in regard to the question of an efficient process in relation to handling a mailing system or a declaration system of voting. If you do make that recommendation, what powers do you have at the moment to be able to enforce that recommendation or is it just simply if they choose not to they can ignore it?

**Mr Kerslake**—It is the latter. We have no power. We will review elections that have been conducted. If we found that there were major problems, we will go back to an organisation and point out that this particular rule created great difficulty for us. Some of them will be very cooperative and will address those rules; some will not. Some say they will and it just slips their mind. When you get around to the next election, you suddenly



find you are confronted with the same problem, despite our best efforts to overcome those problems.

**Mr McDOUGALL**—Do you feel that those rules could be tightened up in some sort of standard, even complying with the ILO legislation?

**Mr Gray**—The problem we have is knowing where that line is drawn and to what extent one can compel to standardise. It is that which is not always clear. Indeed, I think the opinions that we have had are not absolutely prescriptive about where that line is drawn. It is open to the commission through the returning officer and under the legislation as it stands to inquire and to make suggestion.

As Mr Kerslake has said, we do not have the power to compel. If that power were to be given to the AEC, it would have to be given in a way which did not infringe the requirements of the ILO convention. It is not clear, and it would take considerably more effort to determine, where that line of compulsion can be drawn. Indeed, it may have to be done on a case-by-case basis and probably tested each time if the organisation were of a mind to actually test that legally on each occasion that we sought to compel someone to that standard. Whilst it is a possibility, it is one that is not clear of any obstruction and we will have to look to it.

**Senator ABETZ**—Legally though, with the ILO convention—I suppose this is getting into another area—the Australian parliament could nevertheless legislate and it would be binding on the unions or organisations involved. Sure, we might be in breach of some ILO convention that was made X number of years ago, but if the purpose was to make them more democratic, more representative and provide integrity for the system of election, it seems to me a very strange situation that there ought be public policy reasons relating to some ILO convention mitigating against all those public benefits. I suppose that is a good argument why we should not be entering into these treaties willy-nilly, but that is not something that you have to concern yourselves with.

Did you seek to get legal advice as to the competency or the capacity of the federal Parliament to legislate? The legal opinions to me seemed only to go to the extent of saying that it would be in breach of an ILO convention. I am one of these firm believers that if a breach of the convention means a better result for the Australian people, we ought to breach the convention and go ahead with it. I would like to know whether you teased out with the legal advisers the further aspect of whether it would be competent, capable and enforceable for such legislation to be passed in Australia.

**Mr Gray**—The short is answer is no, we did not. Secondly, to the extent that you wanted to explore that, that is clearly a matter of public policy to be debated in the parliament and one which falls outside our competency to make comment upon.

**Mr Kerslake**—Can I make one brief comment in addition to that. In the advice

that we got from the Attorney-General's Department, they involved their people from not only the industrial law area but from the international law area as well. Although they have not addressed that specific issue, I would suggest that you can infer from their advice that a matter could successfully be challenged in the courts for a breach of the convention. That becomes a question for policy decisions to be made as to the risks entailed and so on.

**Senator ABETZ**—In which court would they challenge the legislation?

**Mr Kerlake**—They could certainly take the matter to the International Court of Justice. We know that countries may or may not abide by the decisions that are taken there. I am saying that on an historical basis—some have and some have not. It still raises a major issue for consideration as a policy issue.

**Mr LAURIE FERGUSON**—I have a point on the roll. Are there uniform rules in regard to the financial status of people or does each union have the right to have different rules in regards to who can be on the rolls from the point of view of financial status?

**Mr Kerlake**—They have vastly different rules in terms of financial eligibility.

**Mr LAURIE FERGUSON**—What would be the parameters of those kinds of rules? What would be an extreme case of people not being financial in a practical sense?

**Mr Kerlake**—I am not sure whether this answers your question, but there is an example—I cannot name the particular organisation—where people who are having their membership dues paid by payroll deduction fortnightly, which you might argue was not only for their own benefit but for the benefit of the organisation because it ensures they are getting their money, were unfinancial under the rules. They needed to have paid in advance for three or six months beforehand or whatever and they could have been disenfranchised even though they were paying their dues on a fortnightly basis.

**Mr LAURIE FERGUSON**—Would that be an example that you have taken up with that organisation, or don't you worry about that?

**Mr Kerlake**—We had taken that up with the organisation but that was an example where it resolved itself temporally in the sense that the election did not go ahead for other reasons.

**Mr LAURIE FERGUSON**—Would there be instances at the other end of the spectrum where unions allow people to be, essentially, unfinancial and have very liberal rules?

**Mr Kerlake**—Most, if not all, require you to be financial. It is just really a question of time for which you have to be financial before nominations or before the

ballot is conducted.

**Mr Lewis**—There would be, for example, nothing to prevent an organisation saying, ‘If you’re financial as of this date, then you can vote in the election.’

**Mr LAURIE FERGUSON**—Months previously.

**Mr Lewis**—Yes, they can do that. That is one possibility. Basically, the legislation does not prevent them doing that, but those are extremes.

**Mr LAURIE FERGUSON**—I guess it is a bit difficult if people pay in half years.

**Mr Lewis**—Yes. Some organisations require you to pay a quarterly in advance. With some you have to be a continuous financial member for 12 months beforehand and with others you have to be financial as of that time and just stay up to date.

**Mr Kerlake**—The important point is that they do vary considerably. From the AEC’s viewpoint, they are often difficult to interpret. There are a myriad of things which are always difficult to interpret. That does create problems for us from time to time. We seek legal advice, take what we think is the best course of action but know very well that we may be challenged in the courts no matter how well we do our job because the rule is just a difficult rule.

**Mr McDOUGALL**—Isn’t the rule set down as part of the organisation’s constitution, and the organisation would be incorporated under a state act of parliament anyway in regard to its constitution? Therefore, I would assume that the eligibility to vote would be subject to a standard rule of incorporation and, therefore, you would have a direct line, in each particular case, of what the rules were for each particular region.

**Mr Kerlake**—I am not aware that that is the case. My understanding is that the rules of the organisation have to be approved by the industrial registry. Once approved, a decision is handed on by registry to us to conduct the election under those rules that are passed on to us by the registry. They are the organisation’s rules, not some other underlying factors.

**Mr McDOUGALL**—Are you saying that the registry does not have a tight enough control over the approving of the rules of an organisation?

**Mr Kerlake**—No. What I am saying is that I am not aware of any requirement relating to Corporations Law or anything like that that underlies how the registry performs its function. I am simply saying that we perform in accordance with the rules handed on to us.

**Mr LAURIE FERGUSON**—To what degree during the amalgamation process

have separate rules survived within union organisations? For example, I think the bus employees union of New South Wales is one of those unions which traditionally have attendance ballots. Are those kinds of differences starting to disappear or are unions on the whole internally different?

**Mr Kerlake**—By and large it has remained. Effectively what you have had by amalgamation is another level brought in over the top which has put another lot of officers and another lot of rules on top of all the other rules that already exist for the various divisions that have amalgamated.

**Mr LAURIE FERGUSON**—So as metal workers you could have a whole series of different rules internally.

**Mr Kerlake**—Yes.

**CHAIR**—You say no two organisations have the same rules. You talk about standardisation and the desirability of that. I guess none of us would necessarily want to force the same formula on everyone in a free country. Can you give us some examples of, say, some obviously bad rules that could be corrected to the advantage of everyone?

**Mr Kerlake**—Are you talking about general categories or a specific example of an organisation?

**CHAIR**—Rules overall. They have to abide by certain things—they have to have a ballot, it has to be a secret ballot and they have to have returning officers, et cetera. But you say that no two organisations have the same rules. Amongst those there would probably be some rules you would like to see changed in those organisations.

**Mr Kerlake**—Can I answer it this way, Mr Chairman: in an ideal world, setting aside the convention for a moment, there are areas, if you like, in the middle of the process where we actually conduct the election where there are problems. For example, different voting systems. You could choose three or four basic voting systems that apply across organisations but they will all have their own particular variation of that particular type of system. You can look at it and you can say that that is a proportional system of some description—we can immediately identify that—but then you have to work out exactly how it works. That then poses problems.

The declaration system we mentioned would be another example in that part of the process. There are other areas where this would really be a policy decision but where organisations might be left to determine their own situation without necessarily impeding what the Electoral Commission does—for example, the particular types of officers they might have or whether you have to have been a member of the union or organisation for one year, two years or 10 years to be eligible to stand for that position. Those are decisions that can be left.

**CHAIR**—On the issue of model rules then, your submission notes that the AEC could develop a menu of electoral systems, and the legal advice you have supports that. But you do not, as I read it, explicitly recommend that course of action. Why? Can you also expand on your comments about a system of cost recovery designed to encourage the adoption of model rules.

**Mr Kerlake**—Yes. If I may take the second question first, cost recovery. Sorry, can you go back over that point for me again.

**CHAIR**—Yes. You made comments about a system of cost recovery designed to encourage the adoption of model rules.

**Mr Kerlake**—If you brought in costs or charges for running elections and one organisation were to adopt something from your manual of model rules, which is available for them to choose if they want, and, because we are very used to running with the systems we are using all the time, there may be economies in conducting that. So if you were charging, you could charge less. If somebody else decides, no, they do not want to choose from that menu but prefer to go their own way, then the real cost to the AEC may be greater because we have to interpret their particular rules and do particular things. That raises the cost.

Our legal advice is that it would not necessarily be in breach of the convention if you did bring in those costs to have a variation in the charges. That legal advice is tied to the question as to whether you make it compulsory or not for the AEC to still run the elections. In other words, once you start to charge anything and still make it compulsory for the AEC to run them, you may be in breach of the convention.

**Senator ABETZ**—Why would it not be in breach of the convention to require the election to be run by the AEC? Is that not infringing the autonomy of the organisation to determine how it is to run its election?

**Mr Kerlake**—That was the point I was making. If you make it compulsory for the AEC to run the elections, then there is a real question that you may well be in breach of the convention by interfering with the organisation's autonomy. If you allow them an out so that they do not have to have the AEC run it but they may choose to do so, and in exercising that choice you charge more or less, depending on the rules they use, that would not be in breach.

**Mr McDOUGALL**—You argue that the introduction of charges might result in organisations seeking exemptions to conduct their own elections.

**Mr Kerlake**—That is correct.

**Mr McDOUGALL**—What are the rules so that they can, simply on the basis of

the introduction of charges, actually opt out?

**Mr Kerlake**—No. They can seek an exemption under the current legislation if they can satisfy the industrial registrar that they could run their own elections and run them satisfactorily and fairly. If the industrial registrar was satisfied that that was the case, then an exemption could be granted.

The point is that, to date, not only have very few gained exemptions but also very few have sought exemptions because they are happy with us running them and they are happy that they are paid for. Suddenly, they are not paid for. A number of organisations point out in their own submissions to this committee that they would then be looking at opting out and running their own.

**Senator ABETZ**—Just coming back to the convention, is it not strictly a system of compulsory elections? When I say ‘compulsory elections’ I mean compulsory to have them conducted by the AEC other than if you get an exemption. For example, we have had compulsory trade unionism in this country but there has always been a provision somewhere along the way of exemption for conscientious objection, but the view is, nevertheless, that it is a system of compulsion. Could you not argue the same thing in relation to the AEC conducting industrial elections in that there is in fact a compulsion unless you get an exemption? On that basis, could it not be asserted that it is in breach of the convention already, irrespective of the charging?

**Mr Kerlake**—I am not the authority on that area but I think that is an argument that could be put. There is a very important practical consideration in this as well—that is, with the legislation having been brought in, everybody seems to be reasonably happy with the way that that particular part of the system is operating. Nobody has challenged it.

**Senator ABETZ**—That goes to show the potential nonsense of some of these international conventions and how they have this perverse impact on our domestic capacity to do things which we think are within the public interest.

**Mr Gray**—Senator, I do not think we want to comment on that.

**Senator ABETZ**—That is not for you to comment on. I accept that.

**Mr Gray**—It is not for us to comment on the content of conventions, but, by the same token, we are bound to take account of what we understand our obligations to be. We do have to operate, as I said before, within the legal regime which is impacted upon, as I understand it, by convention. The extent to which it is impacted—

**Senator ABETZ**—By ‘convention’ you mean international convention.

**Mr Gray**—Yes, international convention. The extent to which the parliament in its

wisdom seeks to enact legislation which it sees either within or outside the bounds of those conventions is a matter for it. What we say is that when the rules and the parameters are identified we work within them. If the parameters are to be moved a little, we merely point to the fact that there may be issues arising in respect of the application of ILO conventions. The extent to which the parliament moves to enact legislation in recognition of that is a matter for the parliament. We do not seek to advise the parliament on that issue other than to draw attention to the advice we have so far received in relation to those matters.

**Senator ABETZ**—I was interested to see if any advice had been tendered or suggested that requiring the AEC to conduct the elections may be in breach of the convention. I think the answer is that you are aware of that argument, but that argument has never been tested.

**Mr Kerlake**—We have never received any advice that what we are doing is in breach.

**Mr McDUGALL**—Could you give us a few more details on why the 18 employer organisations and four trade unions have got exemption.

**Mr Kerlake**—Some of them are very small organisations. For example, a very small number of voters and a very localised organisation make it relatively easy for them to conduct a small-scale election and so on. The registry has presumably been satisfied with that situation.

**Mr McDUGALL**—So you have not looked at it any further. It is simply that, once the registry gives the exemption, you just accept that and do not look into it any further.

**Mr Kerlake**—For more detail that is really a question you would have to put to the registry for the various reasons.

**CHAIR**—Have you knocked back any applications for exemptions?

**Mr Kerlake**—Again, only the industrial registry can do that. That is their role. It is a separate function.

**CHAIR**—Getting back to the point that, if charges are introduced, there may be an increase in the number seeking exemptions. Leaving aside the fact that this may not be grounds for an exemption anyhow, there is a bit of an implication there that the trade unions feel that they can do it cheaper themselves than you can. Would you like to comment on that.

**Mr Gray**—We take the lead, if you like, from the various submissions we have

seen where it is alleged by some of the peak organisations that they would expect a number of organisations to take the decision that if they are to pay then they will exercise the choice, and should be able to exercise the choice, as to whether they use the AEC or not. We have no better way of quantifying what that speculation might be other than to say that it is said by those who represent such organisations that that is probably what would happen. We are not able to say on what grounds it would be cheaper or indeed whether or not it would be cheaper, because, in the scope of things, our average cost is in the order of \$6,000 an election for the 700 that we conduct each year.

**CHAIR**—About \$4 a member.

**Mr Gray**—Quite frankly, we do not think that that is an overly expensive proposition. We try to keep it as efficient as possible. Whether or not organisations such as unions or employer organisations would be able to do it more cheaply and would want to do so and therefore withdraw from using the AEC remains very much to be seen in the event.

**Mr Kerlake**—I do not interpret what other organisations are saying as necessarily meaning that they could find some other external body that could do it cheaper and better than the AEC. In the past when they ran their own elections many of them used their own salaried officers, who they were paying anyway, to conduct those elections. They just balance their priorities. It may be cheaper that way because they are already paying those staff.

**Mr McDougall**—On that cost basis, prior to 1973, when they became totally at the cost of the AEC, there was a cost borne by the organisation and a cost borne by the AEC. What was the percentage factor of increase to the AEC when that total cost came over? I am not trying to find the dollars, because obviously it is way back. What was the percentage cost that the AEC and the organisation bore initially? What did the AEC pick up as a percentage of the total cost?

**Mr Kerlake**—I am not sure whether we have that statistical information available, Mr McDougall. If we can take that on notice, we will do our best to provide you with an answer on that.

**Mr McDougall**—I would appreciate that. While on stats, you mentioned 30 to 35 per cent of people vote in these elections. Could you look back to see where that 30 to 35 per cent has been over time.

**Mr Kerlake**—Yes, we will do our best to provide that information.

**Mr Gray**—We will try to provide those statistics. They will take us back over some time. It may take some effort to get them out but we will certainly try to do so.



**Mr McDOUGALL**—I would just like to get a pattern as to whether or not more people voted before, whether the number has dropped or what has happened to it.

**Mr Lewis**—Over what period would you like it?

**Mr McDOUGALL**—Whatever your records have the ability to give us.

**CHAIR**—You mention also in your submission the desirability of increasing penalties as a more effective deterrent for any irregularities that may come up. Could you comment on that generally.

**Mr Kerlake**—One of the very important points we would want to emphasise to the committee is that, no matter how well we or others, including the AFP, do our jobs, the people who are determined to do wrong may well do wrong anyway. We cannot be out on every street corner trying to nab people, as it were. It really comes down to having an effective deterrent, when you are talking about the relatively small amount of fraud that does take place, to try to prevent that altogether. That is one of the reasons for increasing penalties. An off-shoot of that would be that increasing penalties would automatically put the offence into a category that would no longer be governed by the 12-month limitation period, and you would then be free to pursue those matters at a later date.

**CHAIR**—Has that time factor been a problem in the past?

**Mr Kerlake**—It is a problem. At the present time, people have up to six months to lodge an application for an inquiry. Some inquiries have been known to go on for two to three years. When you add all that up, by the time some evidence comes to light, it is too late for action to be taken.

We have also added the point that, if you reduce that time limit from six months to one month, you would guard against running against any time limit that might apply. You would also be bringing it into line with federal and ATSIIC elections and the time limits that apply there, and the same for amalgamations.

**Senator ABETZ**—In the main, they are just asking questions on that. I think that was the only recommendation out of your six that I had some difficulties with—limiting the time period from six months to one month. The nature of the beast is such that it would be difficult to detect irregularities, or some people might have suspicions or a bit of hearsay here and there. By the time you have the information together sufficient to warrant an inquiry, it may well take longer than one month.

To retain the integrity of the system, should you not allow a greater time period, and should we not be looking at the reason why some of these inquiries have taken 18 months, two years or longer? Would it not be more appropriate to allow a greater time period at the beginning to lodge—for want of a better term—a complaint and to ensure

that appropriate resources are there to have an expeditious inquiry?

**Mr Kerlake**—We were pointing out that there is a problem with the current 12-month limitation period. There are different ways of trying to address that problem. If the problem were addressed by increasing the penalties, thus effectively removing the 12 months time limit, then the imperative to bring forward that six months time limit to one month for election inquiries certainly would not be as great. We could certainly live with that if the time limit factor were removed.

**Mr Gray**—On the other hand, you question why we really ought to maintain the six months. As I heard it, you said that perhaps we could even extend that in order to allow a complaint to be made. It is not done at a federal election and it is not done with ATSIC.

**Senator ABETZ**—I saw the time scales that you have put in.

**Mr Gray**—I wonder why it is that we would need a longer period of time for industrial elections.

**Senator ABETZ**—That is a very valid point. But, working the other way, I was convinced, on reading it, that the other time limits for federal, ATSIC and other elections in fact would be extended out.

**Mr Gray**—In that case, we do not agree.

**Senator ABETZ**—Unfortunately, you did not convince me to reduce but rather to extend the time for the others. But I hear what you are saying.

**Mr Kerlake**—There are some practical issues, including the fact that, at present, we are required to hold onto a lot of ballot material for 12 months. But, with a lot of these inquiries, evidence may not come to light until after that time. It is an arduous process for us to have to store all of this material for that length of time. It is true that there are cases where people go on fishing expeditions—for want of a better description—in industrial elections. While I am not saying that that is not fair enough, they could embark upon their fishing expeditions straight away without necessarily having to wait six months to do it.

**Mr McDUGALL**—What were the eight fresh elections, and were they all for the same reason or for very similar reasons?

**Mr Kerlake**—We have some figures for the eight elections from July 1991 to 1996. If you will forgive me, there are a lot of acronyms here, and I do not necessarily remember what they all stand for. For the AWU South Australian branch, 14 irregularities were claimed. They were mainly found to be technical. There was one irregularity that was claimed as fraud in that an unknown person put in two ballot papers.

**Mr McDOUGALL**—That brought about a fresh election?

**Mr Kerlake**—No, the other irregularities brought that about. The issue of the two ballot papers was not sufficient in itself to bring about a fresh election.

**CHAIR**—Is this list in your submission?

**Mr Kerlake**—No; would you like to have it tabled?

**CHAIR**—Yes. That would be very helpful. Thank you.

**Mr McDOUGALL**—I was really getting at whether it was a series of eight different reasons or one or two which were popping up regularly.

**Mr Kerlake**—Generally, with the exception of the CEPU case, which people are aware of, the other elections were all overturned on the basis of a technical irregularity, not fraud.

**Mr Lewis**—Probably the most common reason is the question about whether somebody should or should not have been on the roll. People pretty well know whether they think that is the case or not from the outset, which begs the question of that six-month issue.

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

*The table read as follows—*

**CHAIR**—As to declaration voting and the use of envelopes, can you elaborate briefly on your preferred position?

**Mr Kerslake**—Our preferred position would be for declaration voting to apply in elections for all organisations and for there to be a uniform type of declaration envelope. There are two main reasons for that. One is the cost factor. At the moment, we may end up doing a very expensive but very small print run for a very specific type of envelope for a particular organisation. Obviously, there are economies of scale if we have a uniform type.

As well, we gain security benefits from having a uniform type. We can ensure that we have a signature and that the person writes their name and address in their own handwriting on the security envelope. That gives us something to check against. I would not want to suggest that in every case that is going to be beneficial, because sometimes you do not have any signature cards or whatever to check against, or they are very old. But it gives us something, which we do not have in many cases, to check against.

**CHAIR**—Are you talking about a single envelope or a double envelope?

**Mr Kerslake**—We are talking about where the voter would put their vote in an envelope, which would obviously preserve secrecy of the ballot, which is sealed in another envelope with a tear-off slip which is then posted to the AEC.

**Mr McDOUGALL**—You are really referring to the same recommendation you referred to before in regard to the federal election.

**Mr Gray**—The same degree of secrecy would be preserved, and some uniformity in declaration votes certainly would enhance our administration of those elections.

**CHAIR**—What number of postal votes now do not have declarations?

**Mr Kerslake**—I do not know the number, but there are a significant number who do not use declaration envelopes. This would certainly greatly enhance the system. Some organisations we have spoken to which currently use declaration envelopes did not necessarily have a problem with a uniform type of envelope.

**CHAIR**—As I understand it, a union may advertise and the Commonwealth picks up the tab—

**Mr Kerslake**—That is correct.

**CHAIR**—without limit. What are the requirements that they have to abide by to inform their members that an election is pending?

**Mr Gray**—Again, it is done according to the rules of the organisation. What we draw attention to is that it is basically open sky. There is no limit. We merely are bound to give effect to the organisations' rules. In relation to advertising, that varies considerably between various organisations. There is no standardisation of the rules there.

**CHAIR**—Putting it another way, is there some sort of minimum requirement below which the AEC would feel uncomfortable because members would be denied knowledge that an election is pending?

**Mr Gray**—Yes, I think we would feel very uncomfortable if they were not advertised.

**CHAIR**—Are you aware of any cases of this?

**Mr Kerlake**—Normally the organisations' rules require advertising in either a newspaper or the organisations' journal or both.

**Mr Lewis**—I have not heard of any whatsoever.

**CHAIR**—So, at the other end, there is a concern that because it is free some organisations could go overboard and even engage in national advertising. You say there is no check on that at the moment?

**Mr Kerlake**—No, we are not suggesting at the moment that the advertising costs are astronomical or out of hand. We simply point to that potential because we have no control over it. In fairness, we should point out the fact that one of our pieces of legal advice, as a specific example of something they thought might be in breach, mentioned an attempt to regulate advertising.

**CHAIR**—How do most organisations go about informing their members? What sort of advertising do they do?

**Mr Kerlake**—There is often a requirement that it be advertised in a major newspaper in that area, or, if it is a national election, that it be put in major dailies around the country. Sometimes there is also provision for it to be advertised in the organisations' journal.

**CHAIR**—Does the cost that you mentioned earlier—the average of \$6,000 to conduct each election—include the cost of advertising?

**Mr Kerlake**—Yes.

**CHAIR**—So it is fair to say that, in most cases up to now, the amount of advertising has been relatively modest?

**Mr Kerlake**—Yes. The exception where the costs can become quite high is the conduct of a national election where you put advertisements in a lot of major newspapers around the country. That knocks that figure up for particular elections.

**CHAIR**—To a point, that is unavoidable.

**Mr Kerlake**—Yes.

**Mr LAURIE FERGUSON**—Away from the cost factor is the question of access of members and the challenge for leaderships. Obviously it is in the interest of the current leadership of any organisation to minimise advertising. Has any consideration ever been given to any kind of government publication where it would be established that it could be looked at once a week or once a fortnight and is readily known to everyone who is interested in union ballots and takeover bids and all of that? I see a bit of a problem with someone having to look at the *Australian*, the *Sydney Morning Herald* and the *Telegraph* every day of their lives to try to pick up a small ad. Has that ever been thought about?

**Mr Kerlake**—No, it has not.

**Mr LAURIE FERGUSON**—Are there any regular publications within the DIR that would be an alternative?

**Mr Kerlake**—Not that I am aware of. I would need to check with DIR on that.

**Mr Gray**—I understand that DIR will appear before you. That is a matter that would be properly canvassed with them. Our answer is that we do not do anything more than we have identified; that is, meeting the requirements of the organisation to advertise as set out in their rules.

**Mr LAURIE FERGUSON**—In the conduct of ballots, have you had people complain or question their ability to know that an election was about to happen?

**Mr Gray**—Not that I am aware of, Mr Ferguson.

**Mr McDOUGALL**—I noted in your submission that you have a total of 44 staff located in each state and territory. Could you give us a break-up of how many of that 44 are in the states and territories and whether or not you would feel that, in this particular case, your submission to another inquiry in regard to regionalisation would have an effect on industrial elections?

**Mr Kerlake**—Apart from the director and assistant director, there is one other person who works in our central office in Canberra. There is a small ACT office of two people, which works under the New South Wales head office as part of the state function and actually runs the operational side here in the ACT. The rest are all in the states.

**Mr McDOUGALL**—Could we have a break-up of that?

**Mr Kerlake**—Yes.

**Mr McDOUGALL**—I would appreciate that.

**Mr Gray**—The second part of your question, Mr McDougall, was what impact, if any, does regionalisation have on industrial elections. As I have indicated to you previously in another forum, we think the 44 people whom we employ are fairly stretched given the number of elections that we conduct.

An independent consultancy provided a report, and we have made mention of this in the submission, that there ought to be a greater integration across the number of returning officers we have. After all, we have 148 returning officers out there who conduct federal elections, and we have those who are returning officers for industrial elections.

With a greater integration of that work force, it has been suggested to us by the consultancy, and indeed by those within the organisation, that there perhaps ought to be a fairer sharing of the burden. I am attracted to that because I think there is reason to use the undoubted skills that our returning officers have at the divisional level. Indeed, it is recognised within our organisation that industrial elections are perhaps more complicated, more difficult, and require perhaps even greater skills than for the conduct of federal elections.

Therefore, it is a bit of a training and experience gaining exercise. I think that there are many within the organisation who not only have but also would welcome the opportunity to gain that additional experience. Therefore, regionalisation provides an opportunity, if it were to go ahead, for some integration—not total—of industrial elections. With the broader responsibilities of our returning officers, in some major metropolitan areas—certainly not across the board—there is an opportunity for some of our returning officers to undertake some of the industrial election work in company with, and in addition to, the returning officers we employ at the state levels.

**Mr McDOUGALL**—If that were the case and you had the ability to cross-work them and the ability to get a real cost recovery out of elections, what sort of impact would that have on your staffing ability to realise some better returns out of the costs that you currently have?

**Mr Gray**—The short answer is that I do not know. I do not know what the impact would be in terms of efficiencies. It depends a little on the number of elections that we are conducting at any one time. It depends a little on the location of any regional offices that may be established and the numbers of people that we would have in those offices who are able to undertake the sorts of industrial elections work that we might be able to integrate within the organisation. I cannot, nor would I try to, give you something off the

top of my head. I do not know what the answer to that will be and probably will not know until the event, were it ever to occur.

**Mr McDOUGALL**—I notice that you have put together two purpose developed software systems for industrial elections. What was the cost of that?

**Mr Kerlake**—I cannot give you a total cost. I will endeavour to check that for you. I would make the point that the stuff that we have developed is very good. Easycount is planned to be used for the Senate, which is an example of how good it is. The person we had we were getting at the price of approximately \$40 per hour, which I think in normal IT terms is very cheap. So, whatever the cost, it was a bargain.

**Mr McDOUGALL**—But you did not get a recovery for it?

**Mr Gray**—We have, in some instances, provided Easycount to other electoral bodies, state electoral bodies, for the purposes of conducting some of their elections. But I would have to refer to documentation and historical data to identify the costs that we have recovered, the costs of the actual development of the application.

It is an application which is most recently used, for example, in Victoria in local government elections. The Victorian Electoral Commission and our organisation conducted local government elections in Victoria. We both used this application very successfully. It is the basis for that application which we have now before the government in respect of amendments where we want to computerise the scrutiny of the Senate and the Senate ballot. We have very high confidence in that. There is also the potential for that same application to be used in the forthcoming South Australian elections.

**Mr Kerlake**—You mentioned our staffing numbers. If you look at the increased volume of work in industrial elections areas over the past number of years, you will see that without those computer developments we would not have been able to handle that work with the number of staff we have. We have not had to increase our staff numbers to pick up the extra work. We have used the IT to cover that.

**Mr McDOUGALL**—I am not actually being critical of staff numbers. What I am looking at is why do we not actually get recovery of the costs incurred to the Australian taxpayer for the conducting of these elections. The purpose for me asking these questions is to put meat on that argument.

**Mr Gray**—We will seek to get such figures as we are able to draw from our records on the cost of that application and whether we get any recovery.

**CHAIR**—You mention in your submission that in 1996 you had an independent consultant look at client satisfaction with the running of your industrial elections program. Can you elaborate on who the consultant was and how that was judged?



**Mr Kerlake**—The consultant was Peter Mullins from ACIL Economics. He conducted client surveys. He also talked to a number of clients of the commission, people within the commission, our staff in the states and so on. He concluded overall that the program was being run very efficiently and very well and that there was a lot of client satisfaction with it.

**CHAIR**—Is that a thick document?

**Mr Kerlake**—It is quite a thick document. I would be happy to table it.

**CHAIR**—We might get a copy of that.

**Mr Kerlake**—There is also an executive summary that might be of benefit.

**CHAIR**—You say that most of the applications to the court are based on matters such as alleged inaccuracies in membership roles and rules of organisation. I think we have mainly dealt with that.

**Mr LAURIE FERGUSON**—I have a question regarding the cost factor. I think we had an earlier preliminary hearing on this issue some time ago. What is the expectation in regard to future work? Is it probable that there has been a very high requirement of amalgamation ballots in this period in that the number of ballots required over the last few years might drop off significantly?

**Mr Kerlake**—You are correct that there was a peak of amalgamation activity, and that has dropped.

**Mr LAURIE FERGUSON**—In a lot of these unions there were understandings that Billy Bloggs was going to be there for three years, there would be an amalgamation process and that division would lose its right to have a separate secretary. We have had a period where these elections have happened, and a lot of positions will basically disappear. Do you think there are trends in what will happen?

**Mr Kerlake**—I am not aware that there is likely to be a significant reduction in the number of positions. There was simply a peak in our workload when we had to conduct the ballot as to whether the organisation wished to amalgamate or not, and that is behind us. I am not aware of any likely significant reduction in the number of positions or ballots for the organisations that now remain.

**Mr Lewis**—The current financial year will have more elections than the previous one. Certainly our March figures were the highest we have had for any March for about four or five years.

**Mr LAURIE FERGUSON**—In the metal workers union there has been a series of

amalgamations—vehicle builders, printers, et cetera. I know this happened at a national level in their union. There was an agreement that, for a period of time, to accommodate people who were previously secretaries and assistant secretaries in the amalgamation process, people were essentially guaranteed a job for the next three or four years. Then when their retirement occurs positions disappear. Have you not really come across that very much?

**Mr Kerlake**—I am not saying that it has not occurred in particular organisations, but we can only go on our overall figures which appear to be certainly higher this year than last, as Mr Lewis pointed out. There is perhaps one other issue that is worth drawing attention to. The new Workplace Relations Act makes provision for ballots for enterprise agreements and de-amalgamation. We do not know to what extent they will be taken up but, to the extent that they are, we are likely to be the ones who will conduct those elections.

**CHAIR**—You say that court inquiries can be initiated only by a person who has been a member of the organisation in the last 12 months. The AEC has no standing to apply for an inquiry, which you would like to see added to section 218. What about other members of the community? Do you have an opinion as to whether it should be extended to others?

**Mr Gray**—No, our view is limited to extending to the AEC that capability of effectively approaching the court in respect of anything that it may feel warrants a challenge to the election. At the moment, that is not possible. As to extending that further afield, I do not think we would see reason to go beyond that. There are those who are participating in the election and they can challenge that. We just want the same capacity as we have, for example, in a federal election. We can initiate a petition if we are of a mind in respect of any electorate. There may well be times when it is appropriate that we do so in the absence of anybody else doing that.

**Mr COBB**—With the inquiry itself, you suggest a two-tier system. Can you briefly elaborate on that?

**Mr Kerlake**—Currently all the challenges are heard in the court. We have already mentioned the fact that a lot of those matters are very technical. A lot of court time and a lot of court expense are taken up dealing with those issues. One possible alternative would be to have a two-tiered system where you had something akin to an administrative tribunal or a particular role for current industrial registrars who could hear these technical disputes at a lower and, hopefully, cheaper level.

Provision would then be made for those matters to have a right of appeal or referral to the court only if there were major criminal matters involved or particularly complex legal issues that would warrant the attention of the court. In other words, you could deal with a lot of them at a lower level at a lesser cost to the Commonwealth. It is

somewhat akin to a proposal that has been put forward by the Administrative Review Council for administrative tribunals and the rights of appeal from a specific tribunal to the AAT which they are looking at limiting along the same lines.

**CHAIR**—The commissioner appointed to inquire into the activities of particular Queensland unions had a conclusion that ‘ballot rigging in union elections in Queensland and indeed throughout Australia is much more widespread than is generally supposed and has gone undetected for years’. Do you agree with that conclusion? Would you like to make a comment on it?

**Mr Gray**—We have no evidence, apart from assertions made by various people, that fraudulent activity is endemic, which I think is the word quite often used. We have brought before you the evidence that we have. I think it takes more than assertion. I do not think it requires substantive evidence before the AEC can conclude otherwise. I think we have identified to you that, out of 3,500 elections or thereabouts, eight have been overturned and only one on the basis of fraudulent activity. That is the evidence.

I appreciate that there are those who will publicly assert otherwise; that they believe that something is not being detected. The opportunity has been there for people to come before this inquiry. One assumes that, if people have evidence which substantiates the claim that fraudulent activity is endemic, it will be laid before you. I have not seen that evidence yet. We have no evidence that would suggest that the fraudulent activity is endemic. I do not know on what basis the statement by Mr Cooke QC was made. It was made quite some time ago. It is not within my experience.

What we bring to you is the evidence that we do have. We have placed it before you. I would suggest that, at least in respect of that evidence and when one looks at only one of those elections out of the 3,500 being overturned on the basis of fraudulent activity being detected, I, for one, find difficulty in suggesting that that is endemic.

**Senator ABETZ**—Mr Gray, in 1.4 of the preamble of your submission you say that ballot rigging is not endemic. I suppose it depends on your definition of endemic as to whether you mean that it occurs on a regular basis or that it is a unique characteristic of industrial organisations. With either definition of endemic, it seems to be the setting up of a straw man which is fairly easy to knock down. There is the assertion that it is endemic, and there is not sufficient evidence to support that.

I happen to agree with you that on either definition you cannot accept that it is endemic. Nevertheless, I think it is at a level that would warrant genuine concern. Mr Cooke QC in his general conclusions says, ‘Ballot rigging in union elections in Queensland and indeed throughout Australia is much more widespread than is generally supposed and has gone undetected for years.’ We could argue whether it is endemic or how endemic it is, but the reality is that it exists. There is simply an argument as to the extent to which it exists.

Whilst you have gone for the term ‘endemic’, which would suggest every second union election there is fraud or rigging, a royal commission in effect by Mr Cooke QC found that it was widespread. He had the power to compel witnesses, to investigate, to subpoena documents, et cetera—all the powers that you do not have. I accept that; I do not suggest the Electoral Commission ought to have those powers or that role. But it concerns me that throughout this submission—and I think it is highlighted in paragraph 1.4—you are nearly dismissive of the assertion that there is a problem with industrial organisation elections, something which Mr Cooke QC in the recent CEPU election would suggest we should not be quite as dismissive of.

It might be fair to say that, if in the CEPU election somebody did not have certain contacts which allowed him to take the case right through to the courts, he would still be a dismissed person on the unemployment benefit. The fraud would never have been investigated or highlighted and a new election would not have been called. I am a bit concerned that there is evidence there which you have been a bit dismissive of.

**Mr Gray**—We are not dismissive of anything that may have been undertaken by Mr Cooke QC. He came to certain views and he expressed a finding. He expressed an opinion, but I think the AEC is also entitled to express an opinion on the basis of its experience and what it has in front of it. We have not sought to be dismissive, but to suggest that somehow all those who participate in industrial elections—be they people who vote or people appointed as office bearers as a result of those elections—are somehow potentially contaminated by that sort of statement without substantive evidence of which I am aware is a real concern.

I think that is all I seek to do. I certainly do not, and the AEC certainly does not, seek to be dismissive of what people within the community have expressed as suspicions or concerns about the way in which they believe elections are conducted. We can only draw upon what we have had placed in front of us. We can only draw upon what has been put before the courts and the findings of those courts to identify whether something is as widespread as some public perceptions may—

**Senator ABETZ**—What about royal commissions? You have told us about courts, but what about Mr Cooke’s inquiry which was attached to your submission? You make comment of it in 2.6.3. Do you agree with his conclusions?

**Mr Gray**—With great respect, I am not in a position to agree or disagree with his conclusions. That was, as I understand it, an inquiry into certain organisations in Queensland operating under Queensland legislation and rules.

**Senator ABETZ**—He did say Australia wide.

**Mr Gray**—Then he went on and said Australia wide. Whether he had witnesses who were drawn from us, I do not know. I do not wish to make a judgment or a comment

upon the findings of Mr Cooke.

**Senator ABETZ**—Have you not made a judgment and a finding in relation to Mr Cooke because you assert in 1.4:

Contrary to the views expressed by some commentators and critics, fraud or ballot rigging is not endemic in industrial elections conducted by the AEC.

Does that not suggest that you have cast around and sought as much information as possible and drawn your own conclusions from the information that is available in the public arena? I would have thought that Mr Cooke's findings after a two-year investigation would be pretty thorough; that they would have given in general terms some substantiation to those assertions. Whilst I agree we can argue about the word 'endemic', he came to the conclusion that it was widespread. What has occurred in the last five or six years, if anything, that might suggest that those concerns expressed by Mr Cooke in 1991 now no longer apply? Has anything changed in that time?

**Mr Kerslake**—In that time, there has been one court finding of fraud in an industrial election conducted by the AEC.

**Senator ABETZ**—I accept all that, but the point is that the electoral commission does not see itself as a policing body, which I accept. There is no criticism of that. But you basically accept the roles as they are given to you. Unless you are specifically alerted to the possibility of fraud or of somebody rolling over, a lot of fraud may occur without the AEC being alerted to it because you do not undertake the cleansing of industrial election rolls as you do with the federal electoral rolls. It just seemed to me that you were somewhat dismissive of what has been the experience when you do not have a policing role.

**Mr Lewis**—Neither the members of the organisations themselves nor the major trade union or major employer bodies have come to that conclusion. None of the members of the organisations themselves who may be in a better position than us to know if they are being intimidated or threatened have taken that up. The factual side is that they simply have not done it. The major employer bodies which would clearly have an interest if they thought that there was an endemic problem with corruption in trade union elections have not made that point. In fact, they have made the contrary point.

**Senator ABETZ**—I suppose the thing about ballot rigging is that if you do it 'well' you will not get caught. All I suppose I would be encouraging is the AEC to be somewhat more vigilant and somewhat more inquiring. It seemed to me, without being too harsh, that the AEC adopts a see no evil, hear no evil, speak no evil attitude in relation to industrial elections. That seems to be the flavour coming through your submission.

**Mr Gray**—We would totally reject that, as you would expect us to. We do not

take that attitude. I think that we have a very proud record in relation to the conduct of industrial elections. I do not think that the record, either before the courts or, indeed, anywhere else, provides any evidence which suggests otherwise. I have sought to make known to you that we are not dismissing anybody else's opinions or views. We have sought to identify what we within the AEC and from our perspective and from the advantage, if you like, of being close to the conduct of elections, have a view about.

I appreciate that there are those who believe, as they do with federal elections, that there is rotting on a wide scale and that there are various fraudulent activities undertaken by parties, et cetera. But they are assertions; they are not proven and they are not the subject of evidence that is placed before you and others or courts. I do not think that the assertion alone is sufficient to determine the issue. I think the assertions have to be followed by the presentation of substantive evidence. I think due process has to occur. I think that we have to assume that those who do participate either as electors or as those who are elected have participated in a fair and proper process unless otherwise determined by evidence that can be examined.

I am saying this on the basis of what the AEC returning officers have come to conclusions about and so on. There will always be a difference of opinion. We are more than aware that at least one of our officers has a view that is different to those of his colleagues. By the same token, if there is evidence or something more than a suspicion, it ought to be on the table and it ought to be in front of those authorities who can deal with it. We merely point to the fact that it is not.

**Mr LAURIE FERGUSON**—I agree with Senator Abetz that the CEPU has had the benefit of assistance from people such as the current Prime Minister in providing stamps for their election campaign and some of the exposes might not have come to light. I refer to these lists of challenged ballots. Was there another level of complaint or contact with the AEC by groups in union ballots? My experience is that these union ballots are not exactly friendly contests. You have teams of people trying to take over an organisation for ideological or, in some cases, financial purposes—you never know. Has there been another level of complaint that did not reach this stage? How much have there been in all these ballots?

**Mr Kerslake**—Our returning officers know very well what action they should be taking if they receive such complaints and do seek, for example, further information from any complainant so that that information can be presented to the AFP. The simple fact of the matter is that those sort of things have not occurred to any significant extent at all.

**Mr LAURIE FERGUSON**—I hope we have the opportunity to have Mr Cooke QC before this committee. I have not read his report, but did he actually list a series of other ballots where there were problems besides those investigated in Queensland?

**Mr Kerslake**—No.

**Mr LAURIE FERGUSON**—How many prosecutions arose from the inquiry?

**Mr Kerlake**—I would have to take that on notice.

**Mr Gray**—They were only in Queensland.

**Mr LAURIE FERGUSON**—There was a liquor trades ballot there. How many others were there as a result of this endemic corruption?

**Mr Kerlake**—There were some prosecutions that followed. Mr Marshall Cooke QC had a specific brief to look at particular organisations.

**Mr LAURIE FERGUSON**—But made a wider judgment.

**Mr Kerlake**—And made a wider judgment than based on the evidence that perhaps had occurred in those particular elections in Queensland.

**Senator ABETZ**—I wish to ask one other question that arises out of another submission before this committee. It is asserted that the AEC did not notify the Australian Federal Police—that is, in relation to the CEPU matter—that at least 930 ballots had been identified as forged or tampered with. The police had asked in writing to be informed of any such developments. No action had been taken by the AEC at the time by the time the statute of limitations had expired for starting proceedings under the Industrial Relations Act. Do you have any comment that you would wish to make on that? In fairness, that is on our record and you ought to have an opportunity to respond to that.

**CHAIR**—Whose submission is that?

**Senator ABETZ**—Mr Sheehan's.

**CHAIR**—The AEC may not have had a chance to look at it.

**Mr Gray**—We have not. But as you will see in our submission, we give our response in large measure to that sort of allegation that was made public. We do identify all that we know about that particular incident. I refer you to attachment C. We believe that it covers that and many other matters which are raised by people in respect of that particular inquiry.

**Senator ABETZ**—Moving right along, in paragraph 7.3.4 you tell us that it is open to our committee to consider whether the considerable expertise gained by the AEC in the conduct of industrial elections could be exploited in the private sector on a full commercial basis to offset public funding of industrial elections. I would leave off those last words—'to offset public funding of industrial elections'. That is another issue. Is there anything in principle or practice that would make you opposed to your organisation being

requested to become involved in other organisation's elections on the basis of full cost recovery?

**Mr Gray**—No, there is nothing in principle. In fact, we have sought that. There is an amendment currently waiting to go forward which would amend our section 7 and which would then enable us to undertake and respond positively to many organisations that have written.

**Senator ABETZ**—I noted your comment. I thought it was a good idea that that occurred but was surprised that it was not a recommendation, but that is already in the pipeline.

**Mr Gray**—It is already in the pipeline and we just hope that it will be dealt with shortly because we would very much like it to.

**CHAIR**—Do you have any idea what number would be involved if this option was taken?

**Mr Gray**—No, we do not. The example most often used is the NRMA. Even very recently they wrote to us and asked whether or not we had the authority. Unfortunately we had to say that we did not. That size of organisation is what we are considering. I do not think we are getting down to—it may be but we have not thought it right through—the local footy club.

**CHAIR**—Have you spoken to the NRMA at any stage as to what sort of expense they roughly incur, and do they have any difficulties?

**Mr Gray**—They have no difficulty in relation to the principle of cost recovery. We have not gone to the figures because we do not have the authority and we have just merely responded in general terms so far.

**Mr McDOUGALL**—I have a similar sort of question. I am not holding you to the exact figures, but I note that you said that \$3.6 million, counting administrative costs and overheads on an accrual accounting basis, has been the cost and then you say that about \$6,000 is your average. I take that in full honesty. That works out at about \$4.2 million. Putting that aside, have you at this stage put down a fee for service structure that you could put before the committee so that if there was a full recovery idea sought by the committee, there is a recommendation we might put forward? You might not be able to do that now, but could you give us a cost for fee service for each individual type of election?

**Mr Gray**—I suspect that it would be very difficult. I am prepared to put a few minds to it. We will come back to you. At the moment I would have to take it on notice and see whether that is possible.



**Mr McDOUGALL**—Taking further that one we just discussed in relation to the NRMA, if we were to look at a recommendation of the AEC being available for other purposes it then gives us an opportunity to look at the following question: what sort of recoveries would be available to the AEC as a fee for service to offset your growing costs in other areas?

**Mr Kerlake**—One of the difficulties that we have already pointed to with industrial elections is that the scale and the rules and so on vary so much. You would almost have to look at each individual application from an organisation to say what the true cost was likely to be.

**Mr LAURIE FERGUSON**—I apologise, but I have not read the total submission. I picked up a figure that the average cost of a ballot was \$6,000. What would be the maximum cost of one of the ballots?

**Mr Gray**—It would be more than that. Can we come back to you with some sort of range, identifying the costs.

**Mr LAURIE FERGUSON**—Sure.

**CHAIR**—There being no other questions, I thank you for your attendance here. We will see you at a later stage in the inquiry. You will also be getting back to us on a number of questions we asked you.

**Mr Gray**—We will have these forwarded to you as quickly as possible and well before we next see you.

Resolved (on motion by Senator Abetz, seconded by Mr Laurie Ferguson):

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

**Committee adjourned at 12 noon**