



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

Reference: Conduct of the 2007 federal election and matters related thereto

WEDNESDAY, 6 AUGUST 2008

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JOINT STANDING
COMMITTEE ON ELECTORAL MATTERS

Wednesday, 6 August 2008

Members: Mr Melham (*Chair*), Mr Morrison (*Deputy Chair*), Senators Birmingham, Bob Brown, Carol Brown, Hutchins and Ronaldson and Mr Danby, Mr Bruce Scott and Mr Sullivan

Members in attendance: Senators Carol Brown and Ronaldson and Mr Melham, Mr Morrison and Mr Scott

Terms of reference for the inquiry:

To inquire into and report on:

The conduct of the 2007 federal election and matters related thereto, including the Commonwealth Electoral (Above-the-Line Voting) Amendment Bill 2008, with particular reference to:

- a. the level of donations, income and expenditure received by political parties, associated entities and third parties at recent local, state and federal elections;
- b. the extent to which political fundraising and expenditure by third parties is conducted in concert with registered political parties;
- c. the take up, by whom and by what groups, of current provisions for tax deductibility for political donations as well as other groups with tax deductibility that involve themselves in the political process without disclosing that tax deductible funds are being used;
- d. the provisions of the Act that relate to disclosure and the activities of associated entities, and third parties not covered by the disclosure provisions;
- e. the appropriateness of current levels of public funding provided for political parties and candidates contesting federal elections;
- f. the availability and efficacy of 'free time' provided to political parties in relation to federal elections in print and electronic media at local, state and national levels;
- g. the public funding of candidates whose eligibility is questionable before, during and after an election with the view to ensuring public confidence in the public funding system;
- h. the relationship between public funding and campaign expenditure; and
- i. the harmonisation of state and federal laws that relate to political donations, gifts and expenditure.

WITNESSES

**BRIGHT, Ms Anne Geraldine, State Manager/Australian Electoral Officer for Queensland,
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**PICKERING, Mr Tim, First Assistant Commissioner, Electoral Operations, Australian
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Committee met at 9.29 am.

CHAIR (Mr Melham)—I declare open this public hearing of the Joint Standing Committee on Electoral Matters inquiring into the conduct of the 2007 federal election. Today's hearing continues a series of consultations in the major capital cities with people and organisations who have told the committee about how they think the electoral system can be improved or who have some expertise in this area. Today we will hear from former Electoral Commissioner and electoral expert, Emeritus Professor Colin Hughes. He will be followed by Mr Darrell Main, who was a candidate for the seat of Fisher at the 2007 federal election. We will then hear from the Australian Electoral Commission, followed by Mr David Kerslake, Electoral Commissioner for Queensland.

I thank today's witnesses for appearing. At this stage I acknowledge receipt of a letter from the Australian Electoral Commissioner, Mr Ian Campbell, who has advised the committee that the commission has initiated a review of the decision of the Court of Disputed Returns in the McEwen case on the policies, guidelines, procedures, manuals and training provided to electoral officials when making decisions about the formality of ballot papers for future elections. The committee looks forward to receiving advice from the commission about the results of this review.

[9.30 am]

HUGHES, Emeritus Professor Colin Anfield, Private capacity

CHAIR—Welcome. I have just been informed that it is 50 years since Professor Hughes was involved in preparing a paper in relation to the 1958 elections, so his involvement in electoral reforms commenced when I was in nappies. Although the committee does not require you to give evidence on oath, I advise you that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the respective houses. We have received a written submission from you. If you wish to present any additional submissions, feel free to do so, or you can make an opening statement to the committee.

Prof. Hughes—What I would like to say falls perhaps between those two stools. It is more perhaps a matter of updating and then a couple of minor additions at the end. The conduct of elections is an ongoing business. For example, in the time since I prepared the submission which is before the committee, I have had the benefit of reading both the New South Wales upper house committee's report on campaign finance, which contains a lot of useful information, and the Victorian joint committee's report on the conduct of their 2006 election, which contains quite a lot of material that is useful to the issues that I have raised and quite probably other issues brought before the committee.

I will run down the three sections of the Commonwealth Electoral Act that I suggested should be given a look and possibly improved. Regarding section 329, the Victorian committee referred to a couple of possible cases that were before it. At page 147 of their report, they correctly said no to accepting jurisdiction to challenge the outcome, but nevertheless it shows that the problem is a real one and active and that improving the boundary around the problem would be helpful. On the subject of section 348, the taking of photographs at polling places and the like, this is a very active subject because of the ubiquity of the mobile phone that has come in and can be used to transmit pictures. For example, on 12 April, the *Economist*, on page 15, had a special section on mobility that deals with this extensively. On 12 July the same journal at page 55 describes how Israeli human rights groups are providing Arab people with mobile photographing equipment so that they can report atrocities and violence committed against them. Television has showed a very tiny little bit of apparatus that goes behind the ear of nightclub bouncers who are now recording all the proceedings that they are involved in and that frequently end up in court.

There is a technological explosion taking place. I note that the commissioner mentioned the matter to the committee on 27 June at page 37 of the transcript that I have seen of that from the system, so the commission is seized of the problem. Finally in respect of section 351, the various obituaries of the late Senator Jesse Helms—who was certainly the principal practitioner of this course, if not the originator—including that in the *Economist* of 12 July at page 91, refer to his pioneering work in writing to black constituents in North Carolina and warning them that they will get into trouble if they do anything improper at the polls. These are, I think, real issues.

With the committee's indulgence, I would like to call the committee's attention to section 330 of the act, which relates to false statements in relation to rolls. It says:

A person who, on polling day, makes a statement to an elector, either orally or in writing, with respect to the enrolment of the elector that ... is false or misleading in a material respect, is guilty of an offence ...

My suggestion is that the committee should consider recommending that the words ‘on polling day’ be deleted from that section because confining it to polling day means that most of the damage probably would have been done by that point. If you are going to have a sustained attack on electors, it is quite likely to be before polling day to get them out of going to the polling place in the first instance. False statements, such as sending people apparently official-looking documents saying, ‘Your enrolment has been checked and it is false. If you attempt to vote with it you will get into trouble’ are a sort of Ohio-type development.

CHAIR—I suppose with the expansion of pre-poll voting and more people doing postal votes—

Prof. Hughes—Yes. Whenever it occurs, it ought to be an offence, and not confined to that. The other is a mixed matter that I referred to, section 362 (3), ‘Voiding election for illegal practices’, and perhaps should have said more of at that time. Where the act stands at the moment, you have a sort of bi-modal distribution of consequences if there has been malpractice. On the one hand, you have fines and terms of imprisonment set down for specific offences; by and large, though, the scale of the fines is pretty minor, compared to the cost of elections nowadays. Putting up straw men to pay fines would be a minor part of the campaign budget, if one were so inclined to try that course.

The other bump in the distribution is declaring the successful candidate—because you would have had a declaration of the poll by this stage—not elected, or declaring the whole election void, which is a sort of a nuclear penalty at the other end of things. What may be starting to emerge in Australian electoral law is borrowing a concept from essentially commercial law, dealing with malefactor directors and company officers and the like, and disqualifying people from taking part in such activities for a prescribed term. That is much more likely to be a deterrent than a small fine or the pretty unlikely imposition of an imprisonment penalty. You have a third string to the enforcement bow which is saying that you may not hold office in a registered political party for a period of X years, or you may not nominate or be elected to the office prescribed for a period of years. It would be unlikely to be used very often but, like all good deterrents, it is having it there that makes it effective, and hauling somebody off is not.

CHAIR—What is the period that you would be looking at? If someone is convicted or on a bond, are they disqualified for the period of their offence?

Prof. Hughes—Yes. It is purely a penalty matter.

CHAIR—I understand that.

Prof. Hughes—It does not create any new offence. But it says that telling them to pay \$1,000 does not work.

CHAIR—What are you looking at—a five-year thing?

Prof. Hughes—Getting somebody—a magistrate or a county court—to put them away is a long shot, so what you want to do is to have another penalty, which would be imposed by the court, but which would be open to the court in the same way that you can get directors disqualified.

CHAIR—What is the period of disqualification you are looking at—five years, 10 years?

Prof. Hughes—You would want to prevent them at the next election, probably, so you would want a sliding scale. If you said four years, you would get them pretty certainly. Senators might be a bit tricky and would require some thought.

CHAIR—They are always tricky.

Mr BRUCE SCOTT—They are always tricky, yes.

Prof. Hughes—I am sure senators are all above reproach in the first place.

Senator RONALDSON—That is a given, I think.

Prof. Hughes—Perhaps as a rhetorical flourish at the end, could I say: why should the committee anticipate trouble? Let it come down the pipe when it is ready to do so. The best answer is that the consequences of malpractice are relatively unpredictable. The CEA is full of prohibitions and they are applied very rarely or not at all because they are there. The more that are there, the healthier the electoral process is likely to be. That view needs to be set against what I believe to be a changing style of politics. You are having more expensive campaigning in which more attacking styles are being used and in which allegations of malpractice are in the air more than they were 20 or more years ago. In fact, allegations of widespread malpractice have become fairly commonplace. Increasingly options that are available under the act for dealing with conduct that is suspicious and conduct that is not hypothetical—‘what if a Martian landed?’—can be derived from looking at the experience of healthy democracies not unlike ours, with whom we are in constant correspondence in relation to election techniques and the like.

Mr MORRISON—Professor Hughes, thank you for appearing today. Fifty years is a fairly significant landmark. I will ask for the benefit of your experience on some matters. The recommendations you make regarding misleading or deceptive publications, in section 329: if I understand what you are suggesting rightly, you are taking issue with the situation where there may be a candidate over whom some sort of cloud has formed regarding their eligibility and, in the process of the campaign, the cloud is brought to the public’s attention. You are suggesting that some sort of relief be provided to that individual after the election?

Prof. Hughes—With respect, it is a very highly specific cloud. It is a cloud that says that he would not be eligible to win the election.

Mr MORRISON—Because of office of profit?

Prof. Hughes—It has to be that specific because it is not a departure from anything that has been a pretty fundamental view, except for one brief aberration in 1983, that you can regulate truth in politics. Let me say how I got onto it. I got onto it because of the possibility of saying that the candidate had died. If you say that the candidate had died—take, for example, with Mr Scott’s permission, the case of the death of Sir Earle Page, who was sort of lingering on his deathbed as the election was conducted and was voted out by an ungrateful constituency—for whom he had done a lot—on the basis that they were not going to waste their vote on a dying

man. Thinking about that, when the Wentworth contretemps started developing, it struck me that that was an analogous situation.

Mr MORRISON—This is why I am a bit troubled. The situation in Wentworth was that there were serious questions about the eligibility of that candidate. That candidate had more than one opportunity, over the course of what was probably one of the most high-profile House of Representative campaigns in the country, to clarify the matter and really chose not to. I am wondering why this specific issue requires so much attention. Surely there are already plenty of opportunities for candidates—regardless, practically, of what they are accused of, and we are all accused of all sorts of things from time to time. Most of us accept that that is part and parcel of public debate and you have an opportunity to address these things in a range of forums.

I am puzzled why this one requires so much attention. If we are standing for elected office, we know what our requirements are in terms of our eligibility. It is our duty to make sure we are all tickety-boo on that. If we are not, I would have thought that it is fairly reasonable in a democracy for people to raise questions against that, without any fear of doing so.

Prof. Hughes—With respect, the fact that the particular complainant did not take more steps does not terminate the problem, because what if he had put up some sort of explanation, some sort of documentation, and those who were making the allegation continued and said, ‘You see, he’s still lying about this.’ If the allegation is defamatory, it is open to the defamed to rush to court.

Mr MORRISON—Of course.

Prof. Hughes—I speak with feeling on this subject because I once acted in exactly such a case in a by-election in which the newspaper supporting the alternative candidate quoted my client as saying there were only three ladies in the constituency and proceeded to name them. This was a damaging allegation that has never been accounted in Australia, I suspect, to this point. But what I did was bring civil proceedings in the Magistrates Court and got it on and got the maximum £50 damages before the polling day, so we were able to say, ‘A court has held ...’ That is the difficulty with coming up with a definitive determination of the merits of the accusation. I take much of your point: There are problems with it.

Mr MORRISON—I am sorry to interrupt, but I am trying to understand why this issue requires such special attention. As you say, if these matters are defamatory, they are dealt with in other places under other provisions. Candidates deal with all sorts of things over the course of a campaign and in between campaigns. There are remedies available to do that. I am totally puzzled as to why this one requires so much attention.

Prof. Hughes—The immediate explanation is that it is an attempt to improve on a decision of the High Court in Crichton-Browne. The High Court took an extremely narrow view of the statutory provision in Crichton-Browne and this has handicapped coming to the merits of a case ever since. What I am saying is that pursuing the intention of the section, as it stands, and trying to slip around the impediment that the High Court has put in getting to the true intention of the parliament at that point, this might be one way of doing it. That is the motive.

Mr MORRISON—Okay. The other point I want to raise regards the ability to take photographs at polling booths. When I read that in your submission what immediately came to mind were the images we saw recently in Zimbabwe where someone was able to take a photograph of what was taking place and exposed what we all know to be going on in Zimbabwe. I am puzzled why we would want to deny those same freedoms here.

CHAIR—You are talking about inside polling places, not outside, for starters.

Prof. Hughes—No, it is inside.

Mr BRUCE SCOTT—People are hiding mobiles to take photos inside the polls.

Mr MORRISON—I do not want them inside.

CHAIR—They will come in after you.

Mr MORRISON—That is exactly right.

Mr BRUCE SCOTT—They are in the box and someone has got a little device behind them, or near them.

Prof. Hughes—Yes.

Mr MORRISON—Is that the major reason?

Mr BRUCE SCOTT—It is the secrecy of it.

Prof. Hughes—Yes. They are not allowed to take photographs.

Mr MORRISON—You have no issue with the chairman standing outside his own polling booth taking photos.

Mr BRUCE SCOTT—I have seen them, a lot of people. I do not know why they went to vote for him.

Prof. Hughes—It is almost impossible to do anything satisfactory outside the polling booth. You can move the prohibitive line further out. I have seen it—

Mr MORRISON—You mean only inside.

Prof. Hughes—It is purely inside, and it is because it has the potential to violate secrecy and therefore the potential to intimidate voters who do not want their secrecy violated.

Mr MORRISON—That helps. That clarifies that better.

Senator RONALDSON—Just on that question, the person in charge of the particular polling booth will allow only, for example, television cameras and others in there with their permission and the permission of others in the booth.

Prof. Hughes—Yes.

Senator RONALDSON—Surely someone is only going to be doing something like that. No-one will be standing up there with their mobile phone taking photographs, are they, because immediately, one would presume, the officer in charge would remove them.

Prof. Hughes—On what grounds, sir?

Senator RONALDSON—My understanding is that photographs can only be taken inside a polling booth with the consent of the person at the booth.

CHAIR—Professor Hughes, you are talking about non-consenting photographs, are you not?

Prof. Hughes—Yes.

CHAIR—In other words, people take these photographs without the permission of the polling official.

Prof. Hughes—Yes.

Senator RONALDSON—But the professor is running the line that it is intimidation of voters. What I am saying is that there can be no intimidation because if someone blatantly has a mobile phone up and is taking photographs, they will be dealt with very quickly by the polling official.

Mr BRUCE SCOTT—Except that these little cameras or phones today could really be concealed like this.

Senator RONALDSON—That is my point. How can that be intimidating if someone is concealing a camera and taking a photo. No-one can be intimidated, because they cannot see that it is happening. I cannot see the point.

Prof. Hughes—With respect, the explanation is that the word will get around that your picture will be taken by this process going on. People who are intimidated by that then do not turn out to the polls.

Senator RONALDSON—Look, I do not agree with you.

Mr MORRISON—I would not mind returning to your thoughts later on the New South Wales report that you mentioned and get some of your views on that issue later, but throughout your submission you focused more on the enforcement penalties side of things. I would be interested in, firstly, your observations about whether you think there are suitable enforcement powers under the act as it relates to the enforcement behaviour of the commission itself or the Federal Police and, secondly, whether in your observation over many years you have been able

to observe the AEC really having the resources to have a proper investigatory unit and an analysis unit. It is one thing to have good laws, but it is another to have the ability to enforce those laws and ensure they are observed. I am interested in any of your views about whether there are sufficient powers and resources to do that properly.

Prof. Hughes—I preface it by saying that since I ceased to be electoral commissioner, I have eschewed passing any comment on the conduct of my successors and the commission generally. Where I have, as I have quite often, made submissions to the JSCEM, it is always related to the act—which, as any citizen is, I am entitled to do. But what I can offer, however, is a matter that was considered during the time that I was electoral commissioner. The then deputy commissioner, the late Andrew Serrilus, and I had several long discussions on the matter. Both of us had not inconsiderable experience in the criminal courts, and both of us agreed that getting the police to produce satisfactory evidence for prosecution was bad enough, but to try to set up either a flying squad or average DROs to produce this was not only hopeless but also was highly dangerous, and that the only thing to do was to continue to plead with the police.

In those days the AEC, the AFP and the Crime Commission shared a portfolio. The heads met once a year to talk about budgetary matters. I did raise it with my colleagues there, saying, ‘You know, this is why you get all the money—so that you will help us out when we do this’, and they assured me that their resources were at our disposal. We parted on this basis.

Mr MORRISON—Maybe I can put the question this way, respecting your view not to pass any comment on any of your successors. Do you see a role for the AEC in investigating these issues? My concern is that we go forward and we are looking at some serious recommendations about changes to disclosure provisions and other things relating to campaign finance and to fundraising. The whole area of fundraising has entered a new realm over the last five or six years. The potential for abuse and corruption and so on, in terms of those who participate in providing donations and so on, is significant. Do you see a role for the AEC in acting as somewhat of an investigatory power or even policeman on these things?

Prof. Hughes—Certainly not policemen in the sense of preparing a document which would be suitable to lead a magistrate to issue a warrant or summons, et cetera. It is extremely useful for the funding and disclosure section, whatever it is called nowadays, to have people in it who have some knowledge of what company records look like and things of that sort, and to have the power to ask individuals, organisations and corporations to produce a considered response to questions that are put to them.

I do not think you should have commission officers or a private investigative agency retained by them, in the way that they might retain counsel to give them advice on a matter that they did not want to take to the Crown Solicitor, to take matters so far that they set up the matter to turn over to the police a convincing account of the events with which the police can then proceed. But I do not think they should go around interviewing witnesses and saying, ‘What did you see?’ It is open, for example, for the officer in charge of a polling booth where an accident occurs to try to get the people who are there to make a statement in writing before leave as to what they saw, as to how the potential claimant happened to fall down that flight of stairs—that sort of thing—but that is as far as it ought to go.

Mr MORRISON—Who should do the investigation, do you think?

Prof. Hughes—I think it should be turned over to the Federal Police, although I suppose there are circumstances in which cooperation with the state might be more appropriate, and I would not like to play on that. If the purpose of taking the matter further is to get a conviction, do not let amateurs mess about with it. That would be my considered opinion.

Senator CAROL BROWN—I want to clarify your evidence in regard to section 329. You are saying, as I understand it, not that people cannot make these statements about a candidate as to whether they are qualified or not to stand or take a seat, but what you are saying is that there should be clear path, and your preferred path would be injunctive relief.

Prof. Hughes—Yes.

Senator CAROL BROWN—So that it is cleared up prior to polling day. That is right?

Prof. Hughes—Exactly so, Senator. The general purpose of the act should be to enable electors to vote, and to vote with as much good will and clear information as can be provided by nudges from the act. This is one of the cases. It is clear that the act contemplated statements that went to the filling in of the ballot paper. As I said earlier, the High Court chose to turn that into a purely mechanical exercise. But there is a bit of a march between that and what was the intention, which is: what if the allegation is such that it would cause a mechanical dealing with the ballot paper, such as, ‘I don’t believe there is any point voting for Blogs because he’s ineligible’ or, ‘He’s dead’?

Could I qualify what I just said? I produced ‘death’. I had not contemplated adding ‘death’ to the modification of it because it was really the Wentworth business that made me sit up and take notice. On balance, I would not do that; but, as with Sir Earle Page, there may be circumstances where this would have been justified.

Senator CAROL BROWN—With the photography—I thought you were talking about outside as well as inside—are you aware of any practice of photographs being taken inside a polling booth in Australia?

Prof. Hughes—Not that I am aware of, or, apart from the very odd story. But by and large, the merits have been successful. The large *Economist* story that I mentioned tells of a case in the Kenya general election where the fact that everybody having a mobile phone meant that you could nip in the bud immediately rumours that were being spread by ringing all the various party organisers who were outside booths to tell them what the truth of the matter was. I am certainly not trying to do that, but what I am aware of is, one, that there has been a lot of experience in the United States of intimidating people to deter them from going to the polls and, two, that it seems to me that this photographic device is one of those that they have not attempted yet. But we might get ahead of the market for once and stop it before it happens.

CHAIR—Could that be significant in the US because of the nature of voting in the US—the option of voting, not compulsory voting?

Prof. Hughes—That makes it easier to discourage people from going and it is also the case that there is not a large bloc of the population—like the Afro-American component of the American electorate—who have in living memory known that their heads would be broken if

they went to the polls and impudently tried to vote, whatever people in Washington might be saying about the federal election procedures.

Senator RONALDSON—Thank you, Professor Hughes. I am not quite sure about the analogy between Sir Earle Page and Wentworth. I think there were quite legitimate questions raised in the Wentworth campaign. But could there be a system whereby the AEC checks eligibility of candidates, establishes that?

Prof. Hughes—Not a such difficult alternative.

Senator RONALDSON—And issues a certificate that might be challenged by an opponent or persons? Is there any way a system could be implemented by which the AEC could establish that?

Prof. Hughes—You could ask candidates to fill in a more comprehensive nomination form in which they say firmly that they do not hold an office of profit under the Crown, which is what the Constitution requires, and then you could do all the marriage celebrants who cheerfully decided to nominate—that begs the point—and warn people not to do this again. This is the problem. It is a very difficult area.

A marriage celebrant was a constant worry to me when I was there. If you go around saying it is employment by the Commonwealth, then people will say, ‘I am not employed by the Commonwealth’, but that is not what the constitution says. I would have thought a marriage celebrant was as clear as case of what the people who developed the concept of office of profit was: that you had an office, and people paid you fees for conducting your office. That is why it was prohibited in Great Britain and why the founding fathers immediately stuck it into the act here.

Senator RONALDSON—The AEC, on my understanding, has no power to intervene in these situations.

Prof. Hughes—I am sorry but—

Senator RONALDSON—Where eligibility is in question, the AEC itself has no power to intervene at the moment. I think that is right, is it not? They gave that evidence to us in Canberra. To me, it seems to be entirely unsatisfactory.

CHAIR—They act on the face of the declarations in front of them. They cannot do anything other than that.

Senator RONALDSON—That is right.

Prof. Hughes—Yes. They do, for example—or did, in my day—check the nominators, if you do not have a party secretary nomination, to see whether they are on the roll. This is a slightly hazardous process because somebody might appear on the roll under a different name from what they used when they signed the nomination, typically.

CHAIR—There were a number of candidates who were excluded from nomination or from going on the ballot paper in the recent election. I do not know whether it was one fringe-dwelling party; I think there was a consistent problem with the nomination. They only go on the face of the papers that have been presented in front of them.

Senator RONALDSON—But they were entirely different issues in that case.

CHAIR—Different issues to this, yes. This is a question of: Did you resign prior to nomination, or after nomination?

Mr MORRISON—It is a matter of interpretation by the candidate themselves. I am sure Mr Newhouse felt that he was not in breach of it, but I note that since the election he has not sought to bring any defamation actions.

CHAIR—When I was a public defender, I had a disagreement with my party officials and refused to nominate until the Governor-in-Council had received my resignation. I did not think that the mere writing out of the resignation was sufficient. But these are legal matters. I am interested because, obviously, I like the idea of more information on a form so that it can at least alert officials to the fact.

Prof. Hughes—The commission's manuals used to say—I cannot speak of the present one—that this is a very difficult subject and you ought to take legal advice, if you believe you could be at any risk under the circumstance.

CHAIR—Under the nomination form, Professor, which is specified under the act, there is a declaration that says, 'I'm qualified "under the Constitution and the laws of the Commonwealth to be elected as a ... a member of the House of Representatives ..."' and it goes on.

Prof. Hughes—Yes.

CHAIR—It might be worth looking at that.

Senator RONALDSON—I will go to another matter. I want to take about your favourite group, the H S Chapman Society, of whom I rather take it you are not enamoured.

CHAIR—You are not going to make him pay for it!

Senator RONALDSON—I looked at those advertisements that were in the papers. Quite frankly, I did not see any objectionable about them at all. Indeed I just wonder whether the AEC should be taking a more proactive stance in relation to that, but that is a comment, not a question. Regarding the possible intimidation of prospective voters by the threat of penalties, there are penalties for doing the very things that the HS Chapman Society were alluding to. That is correct?

Prof. Hughes—Oh yes.

Senator RONALDSON—On that basis, why is it not appropriate for an organisation, if the AEC is not prepared to do it? What is the issue with the HS Chapman Society bringing to people's attention that there are penalties associated with it?

CHAIR—I think you can be issued with accumulative offences. I am sorry to cut in, but they intimated that you get an accumulation of offences.

Senator RONALDSON—There is a whole variety of things that the professor—

Prof. Hughes—The proof here of the left-hand side is fine. I would rather they should be doing something else, but it is certainly not that I would ask to have proscribed. What I do object to is what I think is false—to say that somebody would be liable to have 30 offences accumulated and subject them to a \$191,000 fine. Reading something on the left, people who had no intention of committing the offence would not be worried, but if you look at the right-hand side, 'Ah,' you would think, '\$191,000 is a very large sum of money, and I do not want to mess with the sort of risk.'

Senator RONALDSON—But you do not seriously think anyone would mention there are \$191,000 worth of fines, do you? I thought the intimidation you are referring to was wider than that; that you said there was potential intimidation by people being made aware of penalties. Are you now saying that intimidation is related only to the accumulative offences?

Prof. Hughes—The accumulative effect, yes—telling lies about the penalties—because there is no way that the DPP would go for 30 convictions, and it is contrary to Commonwealth policy.

Senator RONALDSON—There are two other matters. You also indicated that an uninformed voter might think that voting for the house and the Senate constitutes voting more than once in the same election.

Prof. Hughes—Yes.

Senator RONALDSON—Surely when that person goes to a polling booth and they are given two separate papers by an official, they are not going to think at that stage that they are doing anything illegal by filling both out, surely.

Prof. Hughes—A lot of mistakes are made by people when they get into the polling booth. They do not in fact do what the act asks them to do. Some of them carry the ballot papers away and leave the commission with the how-to-vote cards. It is an area that is prone to mistakes being made. What I propose doing is narrow the risk of errors being made by good citizens who are trying to do their best but are not as clued up on this rather complicated procedure as they might be.

Senator RONALDSON—But surely if someone goes into an official polling booth and they are handed two ballot papers by an official, they are not going to view that as potentially voting twice, are they? I mean, that sort of beggars belief a bit, does it not?

Prof. Hughes—Well, what if they have received a notice, or they receive a phone call, or a piece of paper in the letterbox saying there is a drive on against multiple voting, and anybody

who votes more than once will get these penalties? That is what they do in the states, in solid places like Ohio. I mean, it is not the backwoods of the Ozarks. It is a state full of universities and good high schools, and people who used to make things they cannot sell anymore.

Senator RONALDSON—My final question also relates to your friends, the HS Chapman Society. Their strong view is:

... that proper identification of electors be required, not only at enrolment and provisional voting, but at general, pre poll, absentee and postal voting, if the Australian democratic system is to be preserved ...

What is your view on voter ID?

Prof. Hughes—I do not think it is really necessary, but if it is thought by people like the committee and the parliament that it is necessary, then I think it ought to be gone at properly and not with foolishness like driver's licenses, which are forged by high school kids by the gross every week to get on the grog. That is why I object to the particular requirements. If you want to have a system of high scrupulousness, then what you need to do is give everyone a photograph.

The Chapman Society, I notice, has submitted to the Victorian committee that there ought to be a bar-coded card issued, but they do not speak of a photograph. The only advantage would be that if you put somebody's bar code into the machine, you would be able to see that the person to whom that registration supposedly belonged was supposed to be 63. You would then have to make a judgement as to whether the person in front of you looked more or less 63 and could be trusted with a ballot paper.

I do not think that is a terribly satisfactory way of going at it. You either trust the people, or you do not trust the people. If you do not trust the people, then what you need to do is have something like 11 million ID cards, which would be very useful for everywhere else. But, unfortunately, some political parties having won battle honours in the past by suppressing the possibility of an ID card never dare touch that rail again.

Senator RONALDSON—So you do not disagree with the principle of identification, but it is the method itself.

Prof. Hughes—I do not pray that it is necessary, but if other people, like the committee and the parliament, believe it, then please do it properly.

Mr BRUCE SCOTT—Could I just expand on the ID card concept and your ideas. You suggest it should be a photograph of the person and a bar code. Would you suggest, prior to every election, people on the roll would receive from the AEC an eligibility voting card?

Prof. Hughes—That produces all sorts of problems in sending it out. What you need to do is to have the person turn up with whatever documentation is appropriate and turn it into a passport type of operation. They are actually seen, and post offices are taking pictures all the time now for passport photographs. You need to sort of expand this. You need to spend a vast amount of money in getting around to the people who cannot get themselves down there. But there are countries which believe that there ought to be photographic identification and do not accept something that is notoriously vulnerable, like driver's licenses.

You could have a situation where you would have a combination of things. Certainly if you want to prevent impersonation, then I would say what you need to do is to go to precinct voting, as most countries in the world do, so that you do not have the opportunity of voting broadly. This, Senator Ronaldson will recall, of course, was one of the issues in dispute between the Chapman Society and me.

Mr BRUCE SCOTT—You want to bring back subdivisional voting?

Prof. Hughes—Over the recuse of breaking the electorate up into smaller blocks. The use of subdivisions was originally intended to be very small blocks. Over 50 or 60 years, they have grown enormously. To return to the original intention of the act would have been to basically introduce precinct voting. You might even have at a large booth an A to G booth, and they took nothing but the people on that very narrow list. At that point you would have an opportunity of having people who knew the people in the area who were designated there, but you would vastly inconvenience a couple of million electors. No government has ever wanted to go down that way, but precinct voting is what people turn to. There is a lot to be said for it, except that it greatly inconveniences a very large number of innocent electors. I would not recommend it, but if you want security, then do what the rest of the world does.

Mr BRUCE SCOTT—Do you have any views—it is not in your submission—on compulsory versus non-compulsory voting?

Prof. Hughes—Yes. I am a great believer in compulsory voting. I have written on the subject and said that it was very useful. For a long time it controlled the need for political parties to have vast numbers of members and also to raise large sums of money to get people to go to the polls. Eventually that justification ceased, but it goes government a legitimacy which is good, when you have a government returned by less than 50 per cent of the population, leaving aside the proportional representation countries where every government is a coalition and so you cannot produce it. But in the single member district countries, it gives governments legitimacy to say that, either by first preferences or by subsequent preferences, we are the choice of the majority of people, and I think it is good.

The indirect obligation to people to learn something more about the electoral process and the competing parties and candidates has been beneficial. It is very hard to quantify that and compare our voters with their voters when you are really comparing your secondary schools with their secondary schools, probably. Generally the effect has been benevolent. If I could make a point about this: what it requires the person who has moral objections to being forced to do anything to do is a purely physical act. It is like saying everybody has to drive on the left-hand side of the road. You have to take your body down to the polling place or fill out an application and get a ballot paper and return the ballot paper. That is all the act requires of you. You do not have to cast a valid vote. You can write all sorts of rude things about the candidates on it—very few do—you can turn it in blank—very few do—and most, having gone to that amount of trouble will make a stab at being a good citizen, and it is all to the good.

What I object to, and this perhaps is not before the committee at this time, is the requirement of a full set of preferences, which I think does get inside your head, and say that we want you to believe things that you do not really believe; we require you to choose between the fascist and the communist to give them an appropriate ranking, and which do you prefer between the two?

Most people would say they do not have a preference. And then we say, 'Well, it doesn't matter. Pick a number and put it down.' I think that demeans the act of voting. That is why I was happy to see optional preferential voting introduced for Queensland state elections following the New South Wales experience.

The consequence of that is that half the population of Australia now votes optional preferential voting at state elections at least, and I suspect it will not be long before probably other states fall into line. It certainly reduced informal voting in those states, though it did produce then the downside of course of maybe pushing up the voting informal at federal elections because voters in those states said, 'What a good idea!', and tried to apply it to the federal ballot paper, in the same way as their first encountering the new Senate ballot paper in 1983. They said, 'You beaut!', and applied it to the federal House of Representatives ballot paper. It took us three elections to get the House of Representatives informal vote back to normal. There is that danger of contagion across it: But, on first principles, optional preferential voting is the thing. If you have preferences, tell us about them and we will build them into the system; if you do not have preferences, we will carry it as far as we can, and then you may, in a very few cases, drop out of the count, but that is your choice.

Mr BRUCE SCOTT—You do not think it leads to disenfranchising people who have nominated either as an independent or outside of the major party political system because offshore preferential voting I have seen in Queensland end up just as first past the post, rather than a preferential voting system. It does tend to build up, but I am interested in your views rather than my views.

Prof. Hughes—The answer is that many people nominate for a variety of reasons. How realistic their expectations are that they are going to win the seat and whether you are doing them a favour by encouraging them in this belief are other questions. If you want to make a protest about something or other, good luck to you, but the electoral system should be regulated or determined in such a way that you can maintain your belief. If your votes do not want to give their preferences, they are not your preferences, they are voters' preferences. If they give them to you, good luck to you, and you should be grateful, but you should not be able to say, as of course the parties can above the line, 'We'll send them off where we think best.' If this is the case, most people drop out of it. I am not convinced.

I see there is a case why people feel aggrieved, but independent candidates feel aggrieved about a number of things. For example, the battle of voting above the line, which I think is still a hardy perennial. Are people still complaining to the committee that a single candidate cannot get above the line on the Senate ballot paper?

Mr BRUCE SCOTT—Yes.

Senator RONALDSON—I have not heard.

Mr BRUCE SCOTT—But do you think that a valid vote could be that if someone has expressed one or two preferences plus their first should be a valid vote? Under full preferential voting, they have to fill in every square for it to be a valid vote.

Prof. Hughes—Yes.

Mr BRUCE SCOTT—That raises the question of invalid votes. Should that be a consideration?

Prof. Hughes—You are digging a pitfall for honest, conscientious citizens by requiring people to do something that they do not want to do.

CHAIR—Do you support a safety net for those voters who might have made a mistake in terms of the so-called Langer provisions where the legislation was changed and the safety net was taken out?

Prof. Hughes—There is the provision of course of the safety net, ‘I think I have made a mistake’, and you go and get another ballot paper, so we will put that aside.

CHAIR—Yes, that is so.

Prof. Hughes—Yes, but the other one is the Langer situation, which is a difficult one. With respect to previous committees and governments, I am not sure where the buck should stop, going on to impose a penalty on people who advocated was where the mistake was. Had you asked any university vice-chancellor, ‘Is it a good idea to get an injunction against people which, by breaching, they can then be locked up at the court’s discretion?’, you would know that that is step 1 to getting a decent riot on your hands.

CHAIR—But if you do not reinstate that, is it worthwhile reinstating the safety net?

Prof. Hughes—I think it should be the old provision but without the penalties. I mean, if somebody says something silly, I would not go after them.

Mr MORRISON—I just need to understand what you are suggesting or agreeing to being an alternative remedy here.

Prof. Hughes—I think what I am agreeing to is saying that I do not want any penalties attached to whatever solution the committee thinks appropriate.

Mr MORRISON—There has been discussion about optional preferential. You are probably aware of the proposal by Senator Bob Brown to introduce optional preferential above the line and removing the ticket voting process for the Senate. My question would be, if you are keen to salvage the votes of those who may only want to go 1, 2, 3, and not number to 14—

CHAIR—No, I am talking about provisions, not what he did.

Mr MORRISON—Yes, but if you had someone under the current system and you are forced to number to 14 and you get that wrong somewhere along the way, that is not a valid vote. I would argue that is the requirement of compulsory voting, if you have a compulsory voting system, But if you want us to put a remedy to that system—

CHAIR—It is a requirement of preferential voting, not compulsory voting.

Mr MORRISON—It is compulsory preferential voting. You have to fill in all the numbers and you have to fill them all in, in sequence, and that is the requirement for a valid vote. If there is a concern that people do not want to express all those preferences, or for whatever reason may be incapable of doing that, surely an optional preferential system, as operates in New South Wales and Queensland at the state level is an effective way of dealing with that, and also does not have the problems associated with allowing what are basically non-valid votes to be counted as valid, and basically conjuring up the Langer situation again, inadvertently or deliberately.

Prof. Hughes—I have said my first preference would be for optional preferential voting. If I could add, what is probably now a forgotten story, the sad saga of the ACT electoral system in the early eighties. There they introduced deeming provisions to this type of problem and this produced an utter hash of it because you cannot deem what everyone is going to do. The discrediting of that option was the voters' strongly held opinions who ranked only two candidates, one of whom was given the first preference and the other who was I think numbered 6,000, and that was deemed to be a second preference, whereas that was not his intention. He did not want to vote for that person in any circumstances.

CHAIR—You are aware of the South Australian lower house provisions, the ticket provisions?

Prof. Hughes—I am sorry, I would not like to respond to that. I am not sufficiently au fait with that.

CHAIR—That is okay. Can I go to proof of identity with you in terms of your period as Electoral Commissioner. Can you tell us again on the record what period that was?

Prof. Hughes—There really was not a problem sufficient to go to what would be an effective remedy, and intermediary steps between those two alternatives probably did more harm than good.

CHAIR—In terms of fraud, were there demonstrated mass cases of fraud, or were they isolated cases in your time?

Prof. Hughes—So far as we were aware, cases that arose that were breaches of the act were not with the fraudulent intention of producing a particular outcome in that division. I will put it that way. I can think for example of one case and I will mention the seat afterwards. A believer in an electoral experience of another country voted 16 times to prove that it was easy so that Australia would have to go over to what they did in the old country and send out how-to-vote cards at the beginning of the election campaign. Then he went and died before there was any chance of prosecuting him. It was probably a pre-mortem furore on his part. You got those sort of situations. He was trying to achieve an objective of the act and he was also trying to elect somebody in Eden-Monaro.

CHAIR—But, Professor, they could still do that, even with the current provisions in the act, could they not, by going to different polling places around the electorate?

Prof. Hughes—Yes.

Mr BRUCE SCOTT—They delegate it.

CHAIR—That particular conduct has not been stopped by the proof of identity provisions which have led to many people not having a vote.

Prof. Hughes—To draw on my experience, which I hope will satisfy the direction of your question, what we were concerned about was something that was likely to influence an outcome. That meant that therefore you needed to look at marginal seats to see what was happening in marginal seats. The underlying starting proposition was: Anybody who is going to do this will be rational, and therefore the rational thing will be to go where this will be of some use. There were not Labor hopefuls who were trying to rot Bradfield or Liberal hopefuls trying to rot Sydney, so you looked at what was happening in marginal seats. What you found was that distribution of any phenomenon that looked suspicious appeared to be random.

CHAIR—Okay.

Prof. Hughes—For example, multiple voting. I notice that the Victorian committee, according to the latest data, was advised by the Deputy Electoral Commissioner of Victoria that they had 71—although I do not know; I thought it was larger, but anyway, it was less than 100—cases of dual voting which were of sufficient concern to investigate. Given that they have 75 or something seats, that works out at about one double voting. If 65 of those were in the most marginal seat and the others were random, then you would begin to think that there was a trout in the milk and why it was there. But absent that, there is no evidence of any plot.

CHAIR—But the remedy would be, in a marginal seat, if it was the difference between a winning margin, that the election could be nullified and you would have a fresh election.

Prof. Hughes—That too. There is that side of it. There is also the fact that the rational party or candidates are mustering the resources to do this and will try to apply these effectively. Therefore they have to identify which are going to be the marginal seats at the next election. Again, if you look at form, there is no continuity in marginality over several elections. A marginal-seat won election is not that at the next one. The only seat that is ever worth having a go at is Eden-Monaro. Eden-Monaro is always marginal.

CHAIR—The bellwether.

Prof. Hughes—The bellwether, yes. When I first moved into, not Eden-Monaro, but what was then the electorate of the Australian Capital Territory, there was a panic going on because the then member for the ACT was pushing voters out of his electorate to go and help his brother in Eden-Monaro. What was happening was that public servants who had retired from the ACT were spending more time down at their place at the beach and the coast, and were changing their enrolment, quite properly. You get those sort of phenomena. Apparent evidence is pursued because people say something specific.

CHAIR—I want to ask you about just one other area and then I will invite Mr Morrison to ask questions. It is to do with McEwen and the court-determined result in the end. As you know, there were 643 disputed ballot papers and 154 decisions were made in respect to readmit. I have raised this issue publicly. What concerns me is obviously the large number of votes that were

determined to be readmitted, and then the seven-months delay because it had to go to court for a determination. What worries me is: What happens if you have a hung parliament or a close result in a number of seats?

Prof. Hughes—As in Queensland's state election, of course.

CHAIR—Correct. I am interested in what your views are of another measure being introduced where you could have something similar to an augmented electoral commission that operates during a redistribution being something that the parties can appeal to in relation to the formality of votes. You cannot preclude the court appeal, but it would be something that, on top of the returning officers' determinations, could be referred to so that we might have added confidence in. I mean no disrespect to returning officers. The redeeming feature in this case was that, even though there were a large number of votes readmitted, the difference in the margin was only 10, so it was really a question of interpretation of those votes, not in relation to favouring one side or the other.

Prof. Hughes—Could I deal with the machinery question? The explanation of why there is this problem is particular constitutional law institutional history. Parliamentary disputed elections used to go to committees of parliament. This was a very unsatisfactory means of proceeding because invariably the majority in the parliament found for their people and against the other lot. Intermediary steps were tried, like putting a judge in charge of the lot, but that did not do much good, and the only other solution was to take it away from parliament and turn it over to the only other reputable body that appeared on the landscape at the time, which were the courts. So you started conferring, by statute, electoral jurisdiction on the courts of whatever common law jurisdiction you were dealing with.

What you found on the continent, starting off from a different procedure, was that the management of elections was centralised and put under, not the local power structure whatever it was in the shires and counties, et cetera, but what tended to be perceived as the central body which took on judicial characteristics from the beginning. So you had a quasi-judicialisation of electoral management in the Napoleonic code countries. We lack that facility of having a hierarchy within what is essentially electoral machinery if we go out and off to the common law courts. It would be quite possible, and quite probably desirable, to try to improvise something in there.

Could I say a propos the subject matter in the McEwen petition that deciding the formality or informality of votes is an extraordinarily difficult thing. It is very much a how long is a piece of string sort of exercise. I fought a case in court on which turned, essentially, whether the markings were valid or not. I do not wake up in the middle of the night, but really it was a terrible business because there is nothing to steer by. What might be useful, if the committee were inclined—perhaps it should have happened in my time—is to ask the AEC to see if it is possible to devise, now that IT thinks this is so much more effective, some 'mechanical'—not that it be fed into a machine and a machine will give you the answer—but something approaching a mechanical method to say that at this point a seven becomes a one, or vice versa; or, at this point, too much of the number is out of the box or is too far from the box to be given credence. This would be to try to produce, not necessarily regulations, but some sort of guidance that could be used, presumably, by the DROs.

Do not worry about trying to convert 8,000 polling officials on election night. All of those ballot papers are going to be looked at by the DRO again, and certainly all the disputed ones that have been challenged by anybody are going to be looked at by the DRO. What you really need to do is try to get your DROs to come together more than they do. With the best will in the world and with the highest intentions in the world, to see if it is possible to improve the game by coming up with some sort of thing that will tell you.

CHAIR—Yes, be it manual or whatever. I am interested in the next level, when you get to the stage where there is this dispute.

Prof. Hughes—Could I just add a postscript? The reason I say that comes back to the Victorian report, which says something that was a distant light on the horizon; that they believed that the IT technology for reading numbers may be on the verge of becoming satisfactory from the point of view of reading ballot papers. In 1984 I talked to all the appropriate firms that I could lay my hands on in California about this, and everyone agreed it to be beautiful and all agreed that if ever they heard anything about it, they would let me know about it. I went away and nothing more has happened. But if there is a technological development that is about to take place, whereby, for the accuracy of the ballot paper, you are going to have a machine that says, ‘That’s a 3 and it is not an 8’, then that may be what the AEC, with the advice of whoever turns out to be correct, may sort out.

CHAIR—Sure, but what about another level in relation to appealing the returning officer’s decision?

Prof. Hughes—No, that was purely the mechanical problem.

CHAIR—The mechanical, but I am interested in—

Prof. Hughes—As regards the procedural aspect—

Senator RONALDSON—Regarding the mechanical aspect, I think all that would probably do is delay the declaration of the poll, quite frankly.

Prof. Hughes—Not necessarily. It depends on the number of votes. I mean it might lead to—

Senator RONALDSON—No, I mean in the context of I think you would have the machine challenged, and then you would have just one replacing the other.

CHAIR—That is one aspect. It is the other one I am interested in.

Prof. Hughes—Yes. Well, if you had—

CHAIR—Because I am worried about the seven months delay that it took the courts to reach a determination.

Prof. Hughes—If I could just deal with Senator Ronaldson’s problem first. I think the thing is: At what point do you have a pretty firm number of disputed ballot papers?

CHAIR—That is right.

Prof. Hughes—And a fair idea of what the margin might well be? There could be all sorts of difficulties with coming to those figures. In the first place, there may be a critical point as to who gets excluded before whom. So you really need to know what the order of exclusion will be before you can come up with an informed guess of what the winning margin may be. If the Liberal goes out first, then you are getting one rate of leakage. If the National goes out first, you are getting a different rate of leakage.

CHAIR—But Professor, I am interested in a dispute in a division where we have a number of votes that exceed the margin. The other stuff we can come back to.

Prof. Hughes—In that case, what you need is to get an idea of what the software might be.

CHAIR—I am not worried about the software.

Prof. Hughes—You are not worried about that? Forget about that, okay. Fair enough.

CHAIR—I am worried about an appeal mechanism where you have a close result. Instead of having to go to the courts, is there a benefit in having the judicial officer, the electoral commissioner, and someone else as a panel that the parties can appeal to if they have a strong dispute? It does not preclude court appeals. It is something that might shorten the process.

Prof. Hughes—Really, the whole internal appeal procedure.

CHAIR—Yes. At the moment you have no option, other than court.

Prof. Hughes—Right. I would think that certainly you ought to have a judge because he may be the only one with legal qualifications. Secondly, it is difficult not to have the AEC because he is as close to the real world on this as you are going to get. The third person I would nominate would be the state Auditor-General, if the states are prepared to do that. You probably would need to have a brief saying, ‘This is likely to occur in two states every election or one state every third election’, something of that sort, because by and large the states have been very generous in making their people available. But the Auditor-General is having people dump babies on his door step at a terrible rate at the moment, particularly the in electoral sphere, which I think is a great mistake.

You would need to approach the states gingerly and with some hard evidence of what the imposition is likely to be. But I would tend to go for somebody outside the Commonwealth at that stage. I do not think you ought to involve the state Electoral Commissioner, who would probably be much more skilled, but essentially the judge knows a lot about taking the words of an act and applying them to something that is put on his desk with the request, ‘Does this fit into the act?’

CHAIR—The commissioner needs these others?

Prof. Hughes—The commissioner knows a fair bit about the awful things that happen out there as people commit ballot papers, and the Auditor-General is accustomed to looking at things

fairly sternly and carefully, and is an honest man who has no axe to grind. I have heard it said in some quarters, which I will not specify, that the danger of having the Auditor-General there is that a political party at the state level will nominate an incompetent to be their Auditor-General so that they may influence matters when they are sitting at the AEC. I regard that as far-fetched.

Mr MORRISON—Going back to the New South Wales report, which was a very comprehensive report, it effectively advocated on the issue of campaign finance reform that Australia adopt the Canadian model with a series of caps and limits on donations to individuals, and so on. I am interested firstly in your views on that issue and, secondly, whether you believe it is feasible that through either the COAG process or something similar we could move towards having a genuinely national system of campaign finance regulation and enforcement?

Prof. Hughes—Going back in time, yes, I would hope that that is the case. Whenever anybody asks me about something at a state level, I say, ‘Well, what you ought to do is first of all talk to the Commonwealth’, and it does seem there is convergence, or potential for convergence, at the moment. There used to be a maxim attributed to the first half of the nineteenth century that for cabinet government, it does not matter what we say, just as long as we all say the same thing. I think that probably ought to be case in the electoral sphere as well. And your second question?

Mr MORRISON—The New South Wales upper house select committee has referred to the Canadian system of caps.

Prof. Hughes—Yes. I divide that into two parts. As regards looking elsewhere, I would always look at Canada first. The Canadians are closest to us. They have a lot of the same problems and the Canadians are more likely to have something that is worthwhile. Having said that, in fact there is one bit of Australian electoral administrative history that survives only on the basis of the report that visiting Canadians wrote about it. We have no files left on the subject, but the Canadian report, of which they sent us a copy, was a beautiful document and very useful to us. As regards caps, I think caps are a mistake.

Mr MORRISON—Expenditure caps?

Prof. Hughes—I think caps are a mistake. I do not think you should have caps. What never gets mentioned is that this is where we started out. We had caps until the Fraser government, responding in terror to the Denison by-election of the Tasmanian House of Assembly, scrubbed the old system which was modelled on the British system, and then set sums. Candidates put in returns which showed ridiculous sums that bore no relation to reality. They put in sums which clearly violated the act and nothing happened. It was a complete disaster. I think one needs to say, first of all: Why will we not end up with the same mess that we had in Australia from 1902 amendments to the act, or since the Great War anyway, until the Fraser government? Why will that not happen again?

The second thing is that I think caps just encourage smurfing. If you say you may not spend more than X, then what is to prevent somebody else spending part of X on your behalf? The English system started out with an agency arrangement. You had the candidate, you had the agent, and anybody else who spent money in an election was for the tar straightaway. That did not work terribly well, but at least there was a rough and ready logic behind it. To come to the New South Wales situation, you probably would have noticed reading the report that I put in a

submission there, I do not think that they referred to a Mr Cube, which is where interest in the United Kingdom really got into the problem of third party expenditure, as we would now say.

In 1950 the Attlee government, hanging on the ropes, had as one of its last intentions the nationalisation of the sugar industry, which naturally caused some concern to Tate and Lyle. When it was at the beginning, Tate and Lyle had finally abandoned in the last couple of months the sugar industry. There is another bit of change going on. Tate and Lyle ran an extremely effective campaign symbolised and led by a cartoon figure, Mr Cube—a jocular fellow who put forward the arguments against the policy that the Attlee government would follow, if returned. The question was whether this was campaign expenditure which was caught by the British provisions, or was it a company fighting for its life against the possibility of legislation?

This is the trouble, once you start setting caps. There are interests out there who do have a vital interest in spending money. How are you going to distinguish between those, and those who are just nasty fronts for party funds?

Mr MORRISON—Sure. So what you would be suggesting is that if we were to go down the path of having caps, we would need to make sure that we addressed the issue of the activities of third parties to make those caps meaningful?

Prof. Hughes—Which is perhaps asking you to square the circle. But, you know, if you want to have a try at it, please do not say that I encouraged you, will you.

Mr MORRISON—In other words, caps without those sorts of protections have serious flaws.

Prof. Hughes—Yes. I think that is really the answer.

Mr MORRISON—Thank you.

Prof. Hughes—It would be nice if you could do it. The only thing about expenditure that I would urge strongly is getting the media to report on the money that they are getting because they may be the only honest men in the game.

Mr MORRISON—You should ask Harold Mitchell that.

CHAIR—You are saying effectively that we should require the media outlets to disclose specific instances.

Prof. Hughes—To go back to what was the legislation in 1983 and then was sort of cut back at about the same time as the provision about proving your expenses. It was making life easier for everybody. But making life more difficult for the media is very helpful in getting to the facts of what people are really spending because almost all the money is going on the media.

Senator RONALDSON—Was it the issue in pre-1983 about the penalties that were attached, or was it the practice itself, or was one driven by the other?

Prof. Hughes—I am sorry, which penalties?

Senator RONALDSON— Pre-1983, before the changes.

Prof. Hughes—You know, I think it was just on the peg from the UK model and was put in place. I wrote an article that appeared on the Democracy Audit website, which ought to still be there if the secretariat could get a hold of it for you. It says something about these early days and, with the sources before me, my recollection probably was more accurate then than it would be now. It quickly bogged down. The Solicitor General or one of the Crown Law officers gave an opinion that started to cut the heart out of the matter. Nobody wanted to make trouble, and it just sort of drifted along. But if you looked at the act—and what one wants to do is encourage everybody to look at the act, secondly take it seriously, and thirdly to obey it—then it was a complete disaster.

To ascertain the reason it was there, you might find something in the 1902 debates. There might even be something in either the Souter volume or the Gordon Reid volume of the parliamentary history, which is quite detailed on electoral matters. Again, the secretariat might chase those two up.

Senator RONALDSON—That is a very good idea.

Prof. Hughes—I do not think Hughes and Graham will be any help to you at all.

CHAIR—Thanks very much for your attendance today, Professor. We really appreciate it. Fifty years experience in this area is without parallel. If you have any additional information you want to provide, you can forward it to the secretariat by Friday 15 August. You will be sent a copy of the transcript of your evidence, to which you can make corrections to grammar and fact.

Prof. Hughes—And, I would hope, in due course a printed report of the committee, of which I have so far a full collection?

CHAIR—We will autograph a copy for you, Professor, with pleasure.

Prof. Hughes—Thank you, Mr Chairman.

[10.49 am]

MAIN, Mr Darrell, Private capacity

CHAIR—I now welcome Mr Darrell Main to today's hearing. Although the committee does not require you to give evidence on oath, I should advise you that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the respective houses. We have received a written submission from you. If you want to make any additional submissions or an opening statement to the committee, please do so.

Mr Main—Thank you, Chair. I would just like to say that the three basic issues I raised in that submission form the majority of my concerns. I note the professor's comments on those precepts about reading the act, obeying the act and conforming to the act that would be good. Certainly these issues have been canvassed over a number of years over and over again, and they are certainly things that need to be addressed. Fundamentally it goes to the issue of a candidate's ability to compete on a level playing ground in relation to signage. It is a burning issue, it is open, and we have various jurisdictions that interfere in it.

The other point is ensuring that pressure and influence are not brought to bear to constrain someone's ability to get out and promote their candidacy. The provisions have been put into the act because they were recognised as issues previously, but even the Electoral Commission acknowledges them. If you read the candidates handbook in relation to penalty provisions of the act, you will find an acknowledgement that the ability to access the protection that those provisions provide is rather constrained because it is very difficult to prove that someone is interfering with a person's political liberty.

The other point is the ongoing need to provide protection for those who are elderly or disabled to ensure that their vote is not unduly influenced or pressured. We have tried over many years, and I suppose I have been around the political process for 30-odd years actively, having worked on and off for various people in both houses of the parliament, but it is very difficult to find a provision that is both effective but not constrictive in other ways and which, no matter what provisions are put in place, is able to be enforced. That is the difficulty.

They are the three fundamental issues that I want to bring to the committee's attention. Although they are challenging issues, we need to put a non-partisan mind to finding a workable solution to ensure that people are able to effectively participate in our democracy by being able to vote, but also that candidates are not constrained in their ability to engage with the electorate during election campaigns.

CHAIR—Before I invite my colleagues to ask questions, I want to come to the signage aspect and relate to you some of my concerns and experiences. It worries me. Firstly, I am wondering what power you say the Commonwealth has to regulate signage of state and local government instrumentalities. I will give you some examples: signs on poles. They are not allowed, technically, but in inner city Sydney, they are everywhere.

There is a consensus in my electorate of Banks in south-western Sydney that they do not appear. We have made sure that if any go up, on either side, they come down. How do you legislate to overcome that, as long as there is equity between candidates? In the Sydney instance,

all parties do it; in my electorate, no parties do it. In relation to other stuff, in terms of shopping centres and whatever, there are requirements that you have to apply for permission before you can have a stall. Where is the power to override that?

Mr Main—It is not saying that you do not have to apply for permission to enter private property or to display a sign on private property. That is not what I am suggesting.

CHAIR—My concern is to ensure equity.

Mr Main—Exactly.

CHAIR—I do not think the member should have one right or candidates have a different right. The rights should apply across the board.

Mr Main—Exactly. Equity is the fundamental issue that I am trying to put. We had a situation where we have a number of different local government areas, which was reduced to some degree with amalgamations in Queensland, but we still have a number of different ones. They had different signage provisions.

CHAIR—But they applied equally to all candidates, or they should have.

Mr Main—They should. The issue was that you could have a massive highway billboard in the same local government area, which apparently was not deemed to be an election sign, but you could not have a corflute when you are having a meeting in a park.

Mr MORRISON—Was the election sign in a paid advertising space, the other one you refer to?

Mr Main—Yes.

Mr MORRISON—Well, that is a legal sign.

Mr Main—That is the question, is it not?

Mr MORRISON—A sign on a pole contravenes the regulation.

Mr Main—No, I am sorry Mr Morrison. The provisions of that local government area, and this is the question, say that no election signs are to be displayed at all until 24 days, which is less than the minimum electoral period.

Mr MORRISON—For local government or state elections?

Mr Main—Election signs are not to be displayed—

Mr MORRISON—For local government or state elections?

Mr Main—No, in relation to the federal government election.

Mr MORRISON—For local government elections?

Mr Main—No, those that relate to the federal election.

Senator RONALDSON—There would be local government by-laws.

Mr MORRISON—Local government by-laws?

Mr Main—Local government by-laws state that elections signs—

Mr MORRISON—For any election?

Mr Main—For any election—this is the difficulty—cannot be displayed at all. The difficulty was, and again it comes down to the same problem.

Mr MORRISON—And that includes commercial spaces.

Mr Main—Obviously.

Mr MORRISON—Bus shelters?

Mr Main—Yes, bus shelters and whatever.

Mr MORRISON—Electorate offices?

Mr Main—Anywhere that is visible, you could not display, yet it was the enforcement of it.

Mr MORRISON—I am sorry, that is where I am getting a bit confused.

Mr Main—Yes.

Mr MORRISON—In my local council area, there are similar types of laws. They do not have these 24-days provisions, but what I am trying to understand is whether those laws apply to public spaces, which would have been A-frames outside a shopping centre and all those sorts of things, or do they apply to commercial—

Mr Main—No, they apply to commercial and private property.

Mr MORRISON—Where someone has paid to display them.

Mr Main—Yes.

Mr MORRISON—So they apply to an advertisement. It bans advertisements—paid-for advertisements?

Mr Main—Basically because of the way it was interpreted.

Mr MORRISON—I am not quite sure that is the case.

CHAIR—I would be interested if you could give the committee a copy.

Mr MORRISON—I am not convinced that is the case.

Mr Main—I provide it attached to my submission. I had to send a hard copy of the provisions.

CHAIR—Is that the Caloundra City Council?

Mr Main—Yes, Caloundra City Council.

Mr MORRISON—What section are you referring to?

Mr Main—I do not have a copy with me, I am sorry.

CHAIR—We will give you a copy.

Senator RONALDSON—But on this point, if I may, getting to the Chair's point regarding equity, you referred to the sitting member's mobile office.

Mr Main—Yes.

Senator RONALDSON—I am not entirely sure what the relevance of that is because under part IV (10), there is a specific exemption for a series of things—human wear, and elections signage exhibited on a vehicle which is being driven on a road, towed on a road, or parked for a period of time not exceeding three hours, or parked on the premises of which the owner or lessee of the vehicle is the owner or occupier—but I do not see anything in there that says that only vehicles driven by a sitting member or a member of the Liberal Party or the Labor Party are exempted. To take up the Chair's point, where was the inequity?

Mr Main—I will give you an example of an inequity.

Senator RONALDSON—Can I just ask you this question: You obviously chose not to, but you were quite entitled to—

Mr Main—Well, I chose to, and I will give you an example.

Senator RONALDSON—Okay. So why did you mention the member's mobile office if you did something similar under that exemption?

Mr Main—Because the member's mobile office was parked in a variety of positions over an extended period of time.

Senator RONALDSON—For a time not exceeding three hours?

Mr Main—For a time exceeding three hours. It was parked for up to a week. I had rented office space in Caloundra.

Senator RONALDSON—But that is an enforcement issue, is it not, not an equity issue?

Mr Main—It is an equity issue because enforcement is part of it. What had happened alternatively was that I had a ute with signage and stuff on it which I moved around. It became a joke that I had given it to one of my campaign workers. It was parked in his yard under those provisions because he was in charge of the vehicle; it was leased to him. He was visited almost daily, even though the thing was parked in his yard. It was basically when we had people available that we would drive it around and park it at certain spots, but move it under the three hours, yet he was continually visited by council—I repeat: continuously visited by council—and harassed about that vehicle.

Senator RONALDSON—But the vehicle is—

Mr Main—It got to the stage that he covered it up. He had a high fence and it was only basically the back panel, when it was parked in his yard, that was visible, and that was because he did not have gates across his driveway. He actually had to cover it up. He had to cover up the back of the vehicle when it was parked there of a night. The equity issue is, if the provisions exist, then the enforcement of those provisions must be applied equally to all people. That is how you obtain equity.

Senator RONALDSON—That is a matter for the council, surely, not this committee. What response did you get from the council when you wrote to them?

Mr Main—‘We would not be biased’, or what have you. But it continued to occur.

Senator RONALDSON—Do you have a copy of that correspondence that we could see? I would be interested to see what the council said.

Mr Main—I did not bring it with me, but I can get copies of those things.

CHAIR—That would be good.

Senator RONALDSON—I presume you wrote to the AEC as well.

Mr Main—I did put stuff through the local divisional returning officer in relation to that.

Senator RONALDSON—Did you get a response to that?

Mr Main—No.

CHAIR—I just cannot see where the divisional returning officer has jurisdiction in this instance.

Mr Main—They do not, and that is the problem.

CHAIR—It is council. If there are councillors, and there might be conservative and Labor councillors—

Mr Main—My issue is this: again, it is about equity, which means that the same provisions apply equally. For local government, they can fight that out in a local government environment, but you have a local government—and it is not even necessarily the local government itself, but it is the individual—which is required to enforce that.

CHAIR—We can make provisions in relation to what happens in nursing homes regarding mobile polling and a whole range of other things because we have powers in relation to that.

Mr Main—I think you have powers though in relation to the period of the election.

CHAIR—No, I do not.

Senator RONALDSON—Not over local government by-laws.

CHAIR—I am sorry, we do not. That is what I am trying to say to you. Do not be under any misapprehension that this is an all-powerful committee that can come in at every level—

Mr Main—Not the committee, but at a federal level the government, particularly in relation to recent cases—

CHAIR—State governments have power over councils, not us.

Mr MORRISON—Yes. You are specifically referring to local government by-laws that are overseen by state government. I have some sympathy for what you are saying in the sense that in the Sutherland Shire Council you are not allowed to put corflutes on telegraph poles. I am fortunate enough to have the head of the Electrical Trades Union living in my electorate and somehow, at every election, posters go up on the poles all over the electorate. The council advises me that it is against occupational health and safety regulations for their staff to be removing those posters that somehow energy workers have been able to put on poles. Look, I have some sympathy for how these things play out and I suspect they play out with swings and roundabouts all the way around the country, but I have never felt that my beef over that was with the federal government or the AEC; it is rather about how the council applies its own policies.

The issue I take with your submission is that I have read the by-laws, and I question whether it contravenes. You are talking about an inequity in terms of a paid-for advertising sign versus signs that have been publicly displayed, not in paid-for space. That will be for lawyers to determine, but to me at least that seems unclear. It seems to be a harsh judgement on the council if they are simply allowing a candidate to put in a paid-for sign. You would have the same opportunity to do the same thing.

Senator RONALDSON—The inequity is in the enforcement. There is nothing inequitable in the—

Mr MORRISON—Opportunity.

Senator RONALDSON—There is nothing inequitable in the by-law. The by-laws are there, and I think what you are saying is that it was the enforcement provisions of that. I just do not see how we or the AEC or anyone else can possibly do anything. My colleague Mr Scott is—

Mr MORRISON—Champing at the bit!

Mr BRUCE SCOTT—Absolutely.

CHAIR—Is there any sympathy for a fellow Queenslander?

Mr BRUCE SCOTT—I have absolute sympathy whenever there is any inequity in relation to advertising or equal access for any candidate, wherever their political support comes from. Prior to the forced amalgamation we had about 38 councils in my federal division, and nearly all of those had different by-laws governing whether we could or could not put up corflutes. Really, I could not do anything about it through the parliament. I had to deal with the by-laws of the local council, and I had to abide by the by-laws of the local council, if that is of any help to you. Now we have fewer of them to deal with, and I do not know what their by-laws are going to be—whether they are even going to look at them. But it raises the issue, as Scott, the member for Cook, spoke about, in relation to the Electrical Trades Union putting up ‘Your Rights at Work’ on power poles that no-one could get down.

Mr MORRISON—No, they were very high up.

Senator RONALDSON—I do not know whether we call that advertising during a political campaign or otherwise.

CHAIR—I do not either, but it was pretty effective.

Mr MORRISON—They are still there, you know. They are still up.

Senator RONALDSON—Using their employer’s telescopic apparatus.

Mr MORRISON—Exactly.

Mr BRUCE SCOTT—That is an issue for the committee, but then I would go to public schools and I would go into common rooms and corridors and I would see ‘Your Rights at Work’ posters.

CHAIR—You are not going to censor the workplace, are you?

Mr BRUCE SCOTT—But I could not put mine in there.

Mr Main—No.

Mr BRUCE SCOTT—That is where the inequity is. If the Electrical Trades Union can put up ‘Your Rights at Work’ on a power pole, why could I not put up mine? I could not bang mine on down lower.

CHAIR—You had 11½ years to legislate, Bruce, and you did not.

Mr BRUCE SCOTT—It is only—

Senator RONALDSON—That is his point. You cannot legislate.

Mr Main—I am enjoying the fact that the committee is engaging in this but—

Mr BRUCE SCOTT—No, no. Chairman—

CHAIR—We are not unsympathetic, but it seems to me that with some of this, I will come back.

Mr BRUCE SCOTT—Chair, I have the call.

CHAIR—This is robust. What Mr Scott is putting does not flow one way. It flows in a number of ways.

Mr BRUCE SCOTT—Both ways, yes.

CHAIR—There is no doubt that certain advantages are attempted to be gained by both sides. But all we can do is ensure that, where we have power, there is legislative equality and principles. What happens beyond that in many ways is up to—as Bruce says, he is not able to stop some of this stuff.

Mr BRUCE SCOTT—No, I cannot. I recall seeing big billboards in my electorate just of the local member saying—

CHAIR—We just wanted to say at the beginning we are not mislead you into thinking that we have got powers. Sorry, Bruce—you keep going.

Mr BRUCE SCOTT—In relation to the power authorities, they are obviously allowing the Electrical Trades Union to put up billboards. Public schools, through the state education system, are allowing the equivalent of corflutes in their yard and in their corridors for the students to see, not just the staff to see in the staffroom. I think there is a very real issue there for us to address. If they can put it up on the basis of equity, surely I can put mine in there on that same power pole or the next one along and have access to that, and also have access in public schools.

Mr MORRISON—Of course, it could be considered to be an in-kind donation, could it not, Mr Scott?

Mr BRUCE SCOTT—Exactly. I think there is a gross inequity there.

CHAIR—You have opened it up, Mr Main.

Mr BRUCE SCOTT—Well, there is a gross inequity. I have a lot of sympathy for our witness today—I repeat: a lot of sympathy, Mr Chairman.

CHAIR—As I said, the problem, I would say, is that it seems to me obviously in this area, and I do not want to draw a final conclusion, that there are robust things happening.

Mr BRUCE SCOTT—‘Gross inequity’ would be a better term.

CHAIR—It may be that there is enforcement in one respect and a turning of the blind eye in the other. I do not know; I do not want to make that judgement. But what I am interested in is—

Senator RONALDSON—In Queensland, I think you doth protesteth too much, Mr Main. I think you have opened up a can of worms.

CHAIR—If you have substantive stuff that you think we have the power to address, that is fine; but, as I said, in reading the stuff from the council, it seemed to me to be perfectly reasonable. Where it was breaking down was the exuberance of the over-enforcement. For a long time I did not know that you needed permission from the local councils for the Sunday shopping A-frames or whatever, but there are implications. Council officers came up to me and I had to pack up and go. It was very early in my time as a member, and we then knew. There were insurance certificates that had to be produced and a whole range of other things. I am convinced that some of my opponents have never applied for that. We did not object; we just let it go through to the keeper.

Mr Main—I agree with all of those issues. The basis still is, apart from the argie-bargie, that it would be useful to have some clarity.

Mr BRUCE SCOTT—Yes.

Mr Main—I think there is ability to get some clarity, either by whether it is by defining what is going to be defined as an electoral sign, or whether it is by agreement with councils and state governments.

Mr BRUCE SCOTT—Yes.

Mr Main—The proof of the pudding is in the eating. It plays both ways. Just because it does, I do not think it is an issue that we can continue to ignore.

Mr BRUCE SCOTT—I agree.

CHAIR—No-one wants to ignore it.

Mr Main—When it comes to the 33-day period, I am not advocating open slather. Queensland and other states tried over the years to outlaw corflutes over time, but it never worked. Queensland has always been very protective of corflutes and the rest of the states, except for the ACT, have gradually come back to the reality of it. But it is just about saying that there is some clarity, and whether that is done by agreement with the state governments has to be decided. I agree: you need to have rules so you are not standing on a roundabout, blocking the views and obstructing traffic; you need to ensure that you are not harassing people by waving things in their faces, et cetera. It is an issue that can affect both sides. You can argue about the quantum forever. However, in relation to signage, either you decide to say, ‘Okay, local

government laws are supreme', or else you get some agreement that says, 'At least then everyone has the same. No-one has anything until 33 days until the formal campaign commences.'

CHAIR—We are not saying local government laws are supreme; that is beyond dispute. They definitely are supreme. We draw our powers from the constitution.

Mr Main—That is right.

CHAIR—And those powers that the High Court say—

Mr BRUCE SCOTT—We will be recognising local government soon, will we not?

CHAIR—Not today.

Mr Main—It is about that, and I think the issue still is that it is a matter of cost. Even if it is a commercial site, although there is a toss issue about that, it means that, if you can afford the billboards, you have a greater capacity. That comes down to the thing you were talking about—caps on spending.

Mr BRUCE SCOTT—Exactly.

Mr MORRISON—Watch the New South Wales state election to know about things getting 'bought out'.

Mr Main—Exactly. There you go.

Senator RONALDSON—The fact that you, in a purely partisan way, have agreed that flagrant breaches of by-laws by unions and others is totally inappropriate is something on which I commend you.

Mr BRUCE SCOTT—Would you then suggest that it would be appropriate that corflutes and those sorts of political advertising in a visible way, such as static or even mobile trailers or whatever, should be banned because all the other forms of advertising, such as the Internet, mail, radio, television, could be considered to be political graffiti almost, some of it?

Mr MORRISON—That is what they said in New Zealand.

Mr BRUCE SCOTT—Yes, they have. It is political graffiti almost, some of it.

Mr Main—As I said, Mr Scott, I come from Queensland. As you know, Queensland has protected its corflutes.

Mr BRUCE SCOTT—No, but in this day and age.

Mr Main—One of the things that I heard repeatedly during the campaign was that people did not see; 'Never saw your sign. Saw everyone else's signs but never saw your signs', and what

have you. Whether that is good, bad, or indifferent, that is the reality. While the general punter may hate it and whinge about it—

Mr BRUCE SCOTT—They do.

Mr Main—They actually like to know that you care enough to go and put in the effort.

Mr MORRISON—But there is only one way you can address that. If you are talking about what this committee can do, in New Zealand and in the UK, you are not permitted to display any material on polling day. What you would be suggesting, if you follow your argument through, is that that ban should apply from 33 days out from a campaign, or throughout the campaign period.

Mr BRUCE SCOTT—Not here.

Mr MORRISON—I just wonder whether that actually is over-reaching because the only power you can have under the Electoral Act would be to ban the signage for it all.

Mr Main—No. My argument is actually the reverse. It is in fact that there is an acknowledgement that these are part of the electoral process. That is the general public's general view, regardless of what they tend to say or how they react, or whatever.

Mr BRUCE SCOTT—If people were able to use it.

Mr Main—It should be able to be available for that period.

Mr MORRISON—I do not disagree with that. I am just saying that, and as the chairman has made the point, we are limited in what we can do.

Mr Main—Sure.

Mr MORRISON—If we were to do something, the only thing we could probably do is what I suggested, which I do not think is what you are asking for, or would be consistent with how we run elections in this country.

CHAIR—I know that one of my colleagues has raised with me—I do not know whether they have made a submission yet—their concern about their exclusion from large shopping centres in Western Australia. They are just precluded, during an election period, from displaying their election material.

Mr BRUCE SCOTT—They are on private property.

CHAIR—That is the point.

Mr BRUCE SCOTT—And that is only an issue if someone else is not allowed to do it.

CHAIR—That is right. It is selective.

Mr BRUCE SCOTT—But even with existing campaigning, sometimes they are cheating.

CHAIR—But the point is, as Senator Ronaldson said, that is private property. If they say, ‘We are not going to allow candidates onto our shopping site’, how can you enforce private property owners into a requirement that they have to? I know they are a real problem because in many respects from a legal point of view, it is not a public space.

Senator RONALDSON—I am sure, if they advertised that, probably their shopping numbers would go up dramatically.

CHAIR—They would go up. Are there any other matters?

Mr BRUCE SCOTT—No, but I have a lot of sympathy on the equity issues raised by our witness. They go across the board.

Senator RONALDSON—Hear, hear, Mr Scott.

Mr Main—Hear, hear.

Mr BRUCE SCOTT—I think we should address the equity issue, Chair, in the final report.

CHAIR—I think there are issues.

Mr Main—I have always rowed hard, you see.

CHAIR—We will obviously look at your written submission.

Mr BRUCE SCOTT—Absolutely. We will make sure we do that.

CHAIR—If there is stuff there that we can make some recommendations on in a constructive way, we will look at it. We appreciate the fact that you have taken the time to come and see us and give us the benefit of your experience because that is what we are about. We want to know what the experiences out there are, what experiences we work on and what are we powerless to help with. Thank you very much for that. You will get a transcript of your evidence in due course and you can make corrections to grammar or to fact. If you have further material you want to place before the committee, you can submit that to the secretariat by 15 August. Thank you very much.

Mr BRUCE SCOTT—Thank you. You have raised a very good point.

Mr Main—Thank you, gentlemen.

Proceedings suspended from 11.17 am to 11.27 am

BRIGHT, Ms Anne Geraldine, State Manager/Australian Electoral Officer for Queensland, Australian Electoral Commission

PICKERING, Mr Tim, First Assistant Commissioner, Electoral Operations, Australian Electoral Commission

CHAIR—Welcome. Although the committee does not require you to give evidence on oath, I should advise you that these hearings are legal proceedings of the Parliament and, therefore, have the same standing as the proceedings of the respective houses. While we have received a submission from the Australian Electoral Commission, it does not directly deal with the conduct of the election in Queensland. If you wish to present any additional submission or make an opening statement to the committee please feel free to do so.

Ms Bright—Thank you, Chair. I have a brief statement. The Australian Electoral Commission provided the required resources and a range of improved voting services to ensure the successful conduct of the 2007 federal election for all Queensland electors. As at 31 January 2007, there were some 2.51 million electors on the Queensland roll. It became evident to the AEC that nationally the roll had declined somewhat, and so the AEC embarked on an extensive national targeted enrolment stimulation program. This resulted in staff across Queensland reviewing some 338,000 addresses throughout the state during the period from March to July.

As a result of this exercise, 51,000 new and re-enrolments and around 74,000 electors updated their enrolment details. As a result of that program, the two-phased national advertising campaign, acquisition of data from the Queensland Studies Authority to facilitate letters to young 17-year-olds and 18-year-olds, plus a range of other local school community programs, the electoral roll grew, and as at 23 October 2007—the close of rolls date for the election—there were some 2.61 million electors on the Queensland roll.

As stated in the AEC's submission of 20 June 2008, improving postal voting services was a priority for the AEC in preparing for the 2007 election to alleviate the issues that occurred during the 2004 election. Improvements included: a revised postal vote application form; a range of enhancements to the AEC's national automated postal voting issuing system, such as integrating Australia Post delivery data; the ability for the AEC to monitor the status of particular batches as well as individual postal packages through the central production process; and the ability for the system to directly produce postal votes to a particular divisional office to allow for the best means of delivery to an elector.

Of the total of approximately 180,000 postal votes issued to Queensland electors throughout the state, 650 postal votes were issued using this particular system facility. In line with a number of AEC policy changes to early voting services there was also an increase in the number of early voting centres, in particular, throughout rural and regional areas of Queensland. This resulted from the government response to recommendation 15 in the report of the Joint Standing Committee on Electoral Matters on the 2004 federal election to use state government agencies to issue pre-poll votes as a trial.

A memorandum of understanding was entered into with the Queensland departments of Justice and the Attorney General, and Smart Service Queensland, to facilitate the issue of pre-poll votes at 22 courthouses and 17 Queensland government agency program offices. This service operated from 14 November up to and including election day. A total of 171,000 pre-poll votes were issued to electors throughout Queensland, and these 35 centres alone issued a total of some 10,800 pre-poll votes to electors. This represented approximately 6 per cent of the total number of pre-poll votes. Early voting centres were also established at the Cairns domestic airport and the Brisbane domestic and international terminals. In total, some 7,200 pre-poll votes were issued to electors at those three centres, representing 4 per cent of the total number of pre-poll votes issued.

Senator RONALDSON—Sorry, Ms Bright, what were those centres again?

Ms Bright—They were the Cairns domestic airport centre and both the Brisbane domestic and international airport terminals.

Senator RONALDSON—And there were 7,000 pre-poll votes?

Ms Bright—There were 7,200, so it was another four per cent of the total vote. As part of the AEC's national trial, five sites across Queensland—in the Brisbane city, Brisbane north, the Gold Coast, Hervey Bay and Cairns—also provided electronic voting machines for electors who are blind or who have low vision to cast a vote. A total of 117 votes were cast at those centres. Some 2.6 million votes were cast at the 2007 election across Queensland. Of those, some 2 million, approximately 78 per cent of the total vote, were ordinary votes, and the remainder, being 22 per cent, were declaration votes.

The number of declaration votes has increased by some 76,000, or 16 per cent, compared to the number cast at the 2004 election, and by some 139,000, or approximately 34 per cent, compared to the number cast for 2001. This reflects the general national trend and the changing voting patterns now evident in federal elections. The overall effectiveness of the AEC's national and local communication strategies to reduce informal voting were also successful across Queensland. The House of Representatives informal vote was 3.56 per cent, marginally below the national average of 3.95 per cent, and down from 5.16 per cent, which was recorded for 2004. For the Senate the result was 2.34 per cent of informal votes which, once again, was marginally below the national average of 2.55 per cent, and down from 2.79 per cent recorded for the 2004 election.

As I mentioned earlier, staff undertook a range of local school and community programs across Queensland to complement national initiatives. These included: activities for young people; attending tertiary orientations; market days and career expos; the Triple J AWOL concert in Innisfail; displays at school constitutional convention events in Mackay, Toowoomba, Townsville and Wide Bay, as well as Youth Week in Brisbane. In partnership with the Queensland City Council's Visible Ink, six young people were employed to conduct a peer-to-peer enrolment drive in the Queens Street and Fortitude Valley malls, and the Queensland University of Technology, as part of the inner city enrolment strategy. In partnership with the Surfers Paradise management, a media and public relations campaign was also conducted to advise all year 12 students enjoying Schoolies how and where to vote.

For new citizens, attendance at citizenship ceremonies to assist with the completion and collection of enrolment forms; for culturally and linguistically diverse groups, a presentation at the Multicultural Development Association, South Brisbane, for community leaders; and for indigenous peoples, displays at NAIDOC events, the sports and cultural festival on election day, and the Brisbane Indigenous Jobs Market. Staff from the division of Leichhardt also presented information at the Croc Festival on Thursday Island.

All community electoral information officers were employed in the lead-up to the election and they were based in Brisbane, Cairns, Mount Isa and Dalby. These officers undertook a program of visits to inform electors of the importance of participating in electoral events and to collect enrolment forms. Information about enrolment voting and the program was posted to some 870 Indigenous organisations throughout Queensland. For professional and other organisations an enrolment and voting editorial was placed in Blue Care and Carers Queensland newsletters.

Voting information was sent to over 200 senior organisations and 100 tourist and travel organisations during the 2007 election. Displays were also held at five events for persons experiencing homelessness, and two events for persons with a disability, the Brisbane Educators Association of Queensland annual conference, the Townsville Show and various shopping centres. Joint displays were also held with the Electoral Commission of Queensland at the Brisbane Careers Expo, which was held in July, and Country Week in September. The AEC will continue to undertake a range of national and local programs to further explore new enrolment initiatives as well as establishing partnerships aimed at increasing participation in the electoral process across Queensland. I am happy to answer any questions that the committee may have.

CHAIR—I will hand over to Mr Scott.

Mr BRUCE SCOTT—Thank you, Anne and Tim, for the work that you did, particularly for people living in rural and remote parts of Australia, relating to postal votes at the last election. I want to ask you, first, about enrolment, the updating of rolls and getting people to enrol initially. You are seeking people to enrol and update.

Ms Bright—Yes.

Mr BRUCE SCOTT—Is there any way that you are connected through registration—through people transferring from one city to a town or whatever? How do you identify people that might have moved from one suburb of Brisbane to another which puts them in another Federal division?

Ms Bright—I think the committee would be aware that we operate a continuous roll update program. We work with other government agencies and, through those sources, we become aware that people move.

Mr BRUCE SCOTT—Government agencies such as?

Ms Bright—Centrelink, or Australia Post, for example.

Mr BRUCE SCOTT—So you are linked into those?

Ms Bright—We get data from those agencies.

Mr BRUCE SCOTT—So you can write to people?

Ms Bright—Yes, and that is our continuous roll update program.

CHAIR—So the data relating to automatic changes of address is sent to you automatically from Centrelink?

Ms Bright—Yes, it is.

Mr Pickering—That is right.

Mr BRUCE SCOTT—And the Department of Transport, say, for someone's drivers licence?

Ms Bright—The Department of Transport is a Queensland or a local initiative, as I would call it. That represents the high number in the table at I think table 2.3 of the commission's submission, which shows that some 45,000 enrolment forms were sourced. The sourcing of those enrolment forms comes because we have an arrangement with the Queensland Department of Transport, which on change of address labels basically advertises that people need to update their enrolment.

CHAIR—Is that uniform around Australia?

Ms Bright—No, it is not.

CHAIR—This is where there is some confusion.

Mr Pickering—No. They are state initiatives, Chair.

CHAIR—Yes. Those are the initiatives that I, and I think the committee, were looking at. I am pleased that they are operating in Queensland. They are operating successfully here.

Mr BRUCE SCOTT—It is the leading state, Chair.

Mr Pickering—We are trying to get arrangements in all states for transport data, but some states are more proactive in releasing that change of address data than others.

CHAIR—What about Centrelink? Is that national, or is it just operating out of Queensland?

Mr Pickering—No, that is national.

Ms Bright—No, Centrelink is national.

CHAIR—So that happens automatically? Every time there is a change of address from Centrelink that information is generated to the Australian Electoral Commission?

Mr Pickering—That is right, and we get a continuous monthly download from Centrelink.

Mr BRUCE SCOTT—Does a person physically have to apply to go across, or do you do it automatically?

Ms Bright—No, it comes from their data.

Mr BRUCE SCOTT—Let us say that they were in this seat over here and they are now in another division. Do you transfer them automatically, or do they have to fill out a form?

Ms Bright—No. As you would understand, the current provisions of the Commonwealth Electoral Act do not allow the AEC to automatically update a person's enrolment.

CHAIR—How many transfers from Centrelink to you are we talking about?

Ms Bright—I am not able to answer that question. I would have to take it on notice.

CHAIR—Obviously it would be in the thousands. I am just thinking about two ways of doing that following Mr Scott's questions. You get the transfer but they have to fill out a fresh form. I am just wondering whether there is a benefit if we are pursuing a modification to their form and, at the same time, they can tick a box or whatever.

Ms Bright—To give them an option.

CHAIR—Obviously we need to check. Obviously the commission would be satisfied as to what additional information needed to be ticked or whatever, but that in itself could be taken to be a new application. Is there is any benefit in something like that? I put you on notice that that is something that the committee might want to look at and talk to the various agencies. It might make your job a bit easier and it might also make it a better process.

Mr Pickering—Certainly, Chair. In relation to other agencies' data there are a number of issues that we would be pleased to talk to the committee about. It is not as easy as one would think simply to obtain data from another agency and to automatically update their addresses on the roll. But that is certainly is not insurmountable and it would be worthy of further discussion.

Senator RONALDSON—Now might not be the appropriate time—and I suspect that it is not—but I would like to ask whether Ms Bright or Mr Pickering would be happy to make a further submission.

CHAIR—Within the commission.

Ms Bright—Within the commission.

Mr Pickering—Within the commission, yes.

CHAIR—And along those lines. That is what we are looking at. We are looking at the agencies with whom we or the commission can interact.

Mr BRUCE SCOTT—Are you aware that there are privacy issues there?

CHAIR—It seems to me that if some forms are modified at Centrelink, or if you have such a good relationship with Queensland transport there could be a better way of doing things. As Senator Ronaldson said, could you take that question on notice?

Mr MORRISON—We have a standing list of issues with the AEC, do we not, Mr Chairman?

CHAIR—Yes.

Mr MORRISON—They said that they would be coming back to a hearing again.

Senator RONALDSON—If there were a relationship with these other agencies that does not exist elsewhere—

CHAIR—I am interested in what it has traduced.

Senator RONALDSON—I think Mr Pickering would also be able to identify what are the pitfalls for others?

CHAIR—Certainly.

Mr BRUCE SCOTT—In relation to the transport department I would be interested in finding out how many people fill out the form. Obviously you might get information and write to them, but they then have to return that information.

Ms Bright—We do not necessarily do that. They get the information when they are updating their address for the purposes of changing their drivers licence details. For the year just gone, 2007-08, that resulted in some 55,000-odd enrolment forms to help to assist with maintaining the roll in Queensland.

CHAIR—How long has that cooperation been in place?

Ms Bright—A number of years, Chair.

Mr BRUCE SCOTT—So 55,000 enrolment forms went out?

Ms Bright—No, 55,000 people sent us enrolment forms as a result. I should go back a step and explain.

Mr BRUCE SCOTT—The transport department gives you the information. Can we track back through that?

Ms Bright—The transport department does not give us the information as such. We have an arrangement whereby people come in to them or contact them by phone or on the Internet to update their licence. The Department of Transport will send out relevant material to facilitate the person updating their licence, but they will also include an enrolment form and a business reply

paid envelope on our behalf. If a person physically comes into their agency to update their enrolment they will be advised that they can obtain an enrolment form and update their details at the same time.

Mr BRUCE SCOTT—In Queensland that resulted in 55,000 enrolment forms?

Ms Bright—In a year.

CHAIR—That is why you keep getting an extra seat, Bruce, after every election. No it is not; it is actually population.

Ms Bright—Referring to initiatives, I mentioned in my opening address that we would also be looking at other initiatives and partnerships. I know that my colleague in Victoria has great success in obtaining information from TAFE, for example, which is good at targeting the younger members of the Australian population. Recently I made a phone call to deputy director general of the Department of Employment, Education and Training. I will be formally writing to them and seeking their cooperation to obtain such data as we obtain from the Queensland Studies Authority.

Mr BRUCE SCOTT—If I recall your presentation correctly, I think you said—obviously a possible election will be held within the three-year cycle—that you run a more aggressive campaign to get people to enrol or update? The word ‘aggressive’ is probably not the right word; perhaps I should have said a more proactive campaign?

Ms Bright—It is more proactive. Most of the initiatives that I outlined are initiatives that we do on an annual basis. I think it is fair to say that, contained within the AEC’s first submission, the AEC invested considerable resources in running a national campaign, which assisted us in being able to get in contact with people to make them more aware that they needed, first, to be on the roll if they were not, and second, to update their enrolment details if they had not changed their address and they needed to do so. This was complemented by the extensive targeted enrolment stimulation program that I spoke about which, in itself—Tim will correct me if I am wrong—was somewhere in the vicinity of \$10 million. Basically, all those functions were part of a national strategy to increase enrolments.

Mr BRUCE SCOTT—Leading up to the obvious issue that arises 12 months after the return of writs after an election is the consideration of the number of seats and the equity between those seats. At the end of the year do you start to become more proactive and say, ‘We have the best possible numbers when that will be considered early next year?’ In certain areas elections get way out of whack and other areas fall behind. In seeking to preserve one vote, one value and, at the appropriate time after every election, in ensuring that the balance between every provision is considered do you run a more deliberate campaign leading up to that time so we know that the numbers we are dealing with are as accurate as possible?

Ms Bright—We endeavour to achieve that situation every month, Mr Scott.

Mr BRUCE SCOTT—Do you?

Ms Bright—Yes, we do. That is one of the major functions of the Australian Electoral Commission. The roll is jointly owned with the Queensland Electoral Commission. At any time Queenslanders could have by-elections and the quadrennium 2008 local government authority elections were recently conducted in March. It is fair to say that there could be a by-election at any time and there is an impending state election in the future. To the best of our ability the roll is kept as up to date and as accurate as we can at any given point in time.

Mr BRUCE SCOTT—The roll is shared with the Queensland Electoral Commission for state and local government. Is that right?

Ms Bright—It is a joint roll, yes. The AEC was responsible for the close of rolls for those March elections, which took place on 31 January this year.

CHAIR—Referring to that continuous roll, I take it that each state operates a little differently. There is no consistent pattern?

Mr Pickering—In relation to what, Mr Chairman?

CHAIR—In relation to updating the roll and to the provisions that are undertaken.

Mr Pickering—Certain national initiatives take place that are consistent across all the states and territories.

CHAIR—Across all?

Mr Pickering—Yes, and state-based initiatives go on top of that. The ones we spoke about before—Centrelink changes of address, Australia Post and the rest of it—are national and they have an impact on all states and territories. There are others such as rental boards, transport, and things like that, that do not yet have national coverage and that are initiated from the state.

CHAIR—But you are able to make assessments as to how successful those strategies are?

Mr Pickering—That is right.

Ms Bright—We are going to be doing a lot more work to evaluate the success of that. For example, in partnership with the Queensland Electoral Commission, we have been able to obtain data from a number of councils, that is, waste data. We know that, if there is a new development and services are connected, an occupant will be moving in there and that person might be eligible to be on the roll. All these sources are avenues that we explore.

CHAIR—I wish to ask you about young people and schools. How are the initiatives in schools going in getting young people on the roll as provisional voters at the age of 17? Is that proving successful?

Ms Bright—It is proving successful. Last year—in 2007—the commission launched its inaugural enrol to vote week, which resulted in tens of thousands of young 17-year-olds and 18-year-olds getting enrolled and being on the roll. If they turned 18 for the 2007 federal election, by polling day they were able to go along and cast a vote. We are now running that campaign—

we just ran it again this year—and our officers also go out and undertake school visits, do mock elections, and explain how the voting system works.

CHAIR—Some years ago I remember seeing some figures that showed it was not until people got to about the age of 25 that it started to level out to 95 per cent enrolment of eligible people, whereas from the age of 18 it was not as high.

Ms Bright—That used to be the case. Basically, today the statistics are showing us that only three out of four young people are enrolled. But that 25-year-old benchmark has extended out a little further today and it is now closer to 40. So people from the 18-year-old to 40-year-old bracket basically are underrepresented.

Mr BRUCE SCOTT—Three out of every four are eligible but not enrolled?

Ms Bright—No, they are enrolled. One in four young people is not enrolled.

CHAIR—We received some submissions about automatic enrolment, that we should look at automatic enrolment, which obviously comes from interaction with other agencies. One of the things I am interested in pursuing—I am not wedded to it—is whether there is any benefit in provisional enrolment being extended to 16-year-olds, which would get them on the roll earlier. That would mean you could get them at school if you were targeting young people. Would that be beneficial? Instead of just getting provisional enrolment at the age of 17, you would get it at the age of 16, and that would carry through. If you are 18 at the time of an election you would get to vote. At least that would be a way of getting them on the roll. I am interested in your views. I know it has not been documented to show just how beneficial that might be.

Mr BRUCE SCOTT—It is documented in the 2020 supplement.

Ms Bright—I was going to say that I think the youth put that up as a consideration at the 2020 summit.

Mr BRUCE SCOTT—Yes, they did.

CHAIR—Hang on; this is a different issue. We are talking about 16-year-olds voting.

Senator RONALDSON—That was voting.

CHAIR—They did not put up my issue, which is why I am looking at a halfway house. I am talking about provisional voting, which would give you, as a commission, the capacity when you go to schools to get the captive audience from the age of 16 and above, as against only the age of 17 and above. They will automatically go on the roll when they turn 18. I am interested to find out what views you have.

Mr BRUCE SCOTT—Mr Chairman, are you saying now that, with an election still two years away, they will be turning 18? Is that what you are saying?

CHAIR—Yes. You could go to a year 10 school that might not have 17-year-olds but that might have students aged 16½, or just short of that age.

Mr BRUCE SCOTT—But they will be 18 at the next election?

Senator CAROL BROWN—Or where they might live in two years time.

Senator RONALDSON—This is a policy, Mr Chairman.

CHAIR—I know. I am just—

Senator RONALDSON—Perhaps the witness can help.

Ms Bright—I was just going to make the observation that this is something the AEC should look at. The other part to it is that the age of students in their final year in Queensland is 17. Basically, they are 12 months behind other students in, say, New South Wales and Victoria.

CHAIR—Okay. So that captures them as it is.

Ms Bright—Once they are on the roll you can imagine that someone aged 20 or 21 might take a year out to go overseas and then come back and go to university. There is also the point of maintaining their enrolment. The statistics for Queensland reveal that the mobility of the Queensland population is about 22 per cent. So 22 per cent of our population moves each year, and that is about 4 per cent more than the national average.

CHAIR—That is what I am interested in.

Mr BRUCE SCOTT—I wish ask a couple of questions about pre-poll voting. From some of the falls that we had during the last election people travelling interstate, as well as the grey nomads, should be able to pre-poll vote. We have a limited number of areas to which they can go and they are centred mainly along the coastal strip. They are not utilising, as they do in the state elections, a lot of the courthouses, or former local government offices.

Ms Bright—QGAP offices?

Mr BRUCE SCOTT—QGAP offices, yes. They voted at a state level, they travelled back again—they are part of this very mobile society—and they cannot go to the QGAP for a federal election. They get pretty tetchy when they ring up. Are you looking at strategies to deal with that issue because of the mobility of our population?

Ms Bright—I refer to the success of the trial for the 22 courthouses and the 17 QGAP offices. It should be remembered that most of those were for grey nomads travelling through rural and regional Queensland. All those sites issued interstate votes on polling day, so they were in operation.

Mr BRUCE SCOTT—On polling day but not before.

Ms Bright—In fact they did the pre-poll votes before.

Mr BRUCE SCOTT—Did they?

Ms Bright—Yes, those centres did.

Mr BRUCE SCOTT—But there are not many sites?

Ms Bright—No. There were 35 sites. On election day the number of sites right across Queensland is somewhat reduced, but we still advertised that information in the newspapers and on radio, and sites are available to be researched on the Internet. Our divisional offices also cater for the state voters.

Mr BRUCE SCOTT—I know that, but when they are 500 kilometres from the divisional office they get a bit tetchy, as you can imagine.

Ms Bright—I know; it is very difficult.

Mr BRUCE SCOTT—You probably also get those calls?

Ms Bright—Yes, the Australian Electoral Commission gets those calls. But the other side to that is that if people are planning a trip they are capable of having a pre-poll vote prior to the date that they leave home.

Mr BRUCE SCOTT—Provided that the rolls have closed and provided that the government has not called a snap election. In the Northern Territory it happens in all jurisdictions from all political parties. However, I think it is still a bit of an issue for those in rural and regional areas. I want to touch on the issue of postal voting, which has improved over time. This is not necessarily exclusive in rural areas, but we have a lot more postal voting where small booths have been closed and there are fewer than 100 people voting. People have been applying for postal votes. The return of those votes and the witnessing of them prior to the close of polls has caused a bit of conjecture in some marginal electorates. Do we have to look at that area? A vote might be returned through the mail system but it might arrive in town only on the Friday, which is a public holiday, a local show day or something else. So the vote is in the hands of the system but it has not been postmarked. Is there a way to deal with that issue from a postal voting perspective?

Ms Bright—I suppose that really is a matter that should be discussed with Australia Post, as the postal voting system utilises the Australian postal system.

Mr BRUCE SCOTT—Yes. They could arrive on Saturday morning but the post office would not deal with them until Monday. It is just a mailbag of mail.

Ms Bright—The office would be closed. Current provisions in the Commonwealth Electoral Act require them to have a postmark on them prior to polling day. Unfortunately, if they are received in our offices with a postmark after that date we have no choice other than to reject them.

Mr BRUCE SCOTT—Do you have any figures relating to the numbers that were rejected in the last federal election in Queensland? Do you have those numbers?

Ms Bright—We would have those numbers, but I do not have total numbers. I am aware that, following an inquiry relating to the division of Flynn, 146 of the total number of postal votes that were issued for that division were in that classification.

Mr BRUCE SCOTT—In the classification of arriving late?

Ms Bright—Arriving with a postmark after polling day.

Senator RONALDSON—Presumably Flynn is not remote. Is that likely to be—

Ms Bright—It is rural and regional, yes, definitely.

Senator RONALDSON—Are there likely to be other seats where the numbers are higher?

Ms Bright—I would have to take that question on notice, Senator.

Senator RONALDSON—If you do not mind, that would be good.

Mr BRUCE SCOTT—It is kind of like for Leichhardt. It applies to almost any electorate, but I think more particularly in rural areas where the mail is not in your box every day. That occurs twice a week in some of the smaller communities.

Ms Bright—Yes, certainly even once a week. That was the work that the commission did in the lead-up to this election to improve our postal voting issuing system. As I said earlier, that allowed for the delivery schedules to be incorporated into the system, so that when we got a request the system automatically determined the best place for the vote to be issued. That maximised the time to get it out to electors and, therefore, for them to vote and return it to us.

Mr BRUCE SCOTT—The big ones are Leichhardt, Kennedy, Flynn, Maranoa and Capricornia. Five or six in Queensland are in that general sort of category. I would be interested in the postal votes that were not allowed because they were returned postmarked after the close of rolls in Queensland.

Senator RONALDSON—Clearly, in 2004 and 2007 there were some dramatic changes to the postal votes. You have answered most of my questions, but are there any other discussions with Australia Post that you think might be useful to refine the process further and make it even more effective? Are there any outstanding issues that you would like to see addressed with Australia Post to streamline it further?

Ms Bright—Having the system improved? I suppose the only thing that the AEC now needs to do for the future is to ensure, as part of the automatic preparation, that it liaises with Australia Post to ensure there are no changes to any of the delivery schedules. It is a matter at which we will be looking. I also suggest when we put in place our future quality assurance program we will be using Centrelink's mail processing officer, who is a mail specialist. We will certainly ensure that those improvements are there for the future.

Mr Pickering—Senator, I might add a few points. One of the things that I think we need to look at with Australia Post is the changing technology within its own infrastructure, and whether

or not postmarks are still something on which it relies as proof of mail, having gone through an Australia Post depot. It is my understanding that the sorting centres do not always use postmarks; they use things called machine marks, which are just time stamps of when it goes at high speed through some sorting centre. I think we need to look at those sorts of issues, in conjunction with Australia Post, to see whether or not the legislation is quite as accurate in describing the way in which mail moves through Australia Post these days.

Mr BRUCE SCOTT—So it goes to central sorting places?

Mr Pickering—Yes, it does.

Ms Bright—It goes to mail centres.

Mr BRUCE SCOTT—I assume that all the mail for western Queensland goes to Toowoomba. Mail for the Central West goes to Rockhampton, and that is another day's transmission before it gets there.

Ms Bright—Australia Post now tracks its mail.

Mr Pickering—Yes.

Ms Bright—That is why they do the timing.

Mr Pickering—This is why we worked so closely with Australia Post after the 2004 election. We identified all of Australia Post's major distribution centres and we looked at the catchment areas to find where the mail would be and which would be the closest divisions. This was a change in our process of lodging the postal vote at the closest distribution point to where the addressee was located. We would not put it into the system, for example, in Melbourne when it was going up to Maranoa; we would lodge it in Toowoomba if that was Australia Post's last distribution point before it was posted to the elector. Those are the sorts of examples and changes in our processes that were introduced in 2007 and that worked so well.

Senator RONALDSON—Are you undertaking that study yourself to have a look at the changes in Australia Post, or do you think it is something that should be looked at?

Mr Pickering—No. Those issues are things for further discussions with Australia Post. Whether or not the committee does it before the AEC is a matter of timing, but we will be having those discussions with Australia Post so that we better understand its processes.

Senator RONALDSON—Sure. Ms Bright, I have a bit of a cold and my hearing has gone. Just off the record, did Mr Kerslake give you any indication of when the state election might be held?

Ms Bright—No.

Senator RONALDSON—I was not too sure.

Ms Bright—That is not part of the conversation that we have.

Senator RONALDSON—I was not too sure whether I had misheard you, or whether you had made some mention of it.

Ms Bright—No. I did not make mention of the state election, but it is fair to say that once the state redistribution is finalised the Australian Electoral Commission in Queensland will be applying for new boundaries to the electoral roll.

Senator RONALDSON—I thought that the informal vote reductions were pretty staggering. You then moved on to this quite exhaustive education process, with schools and elsewhere. Are you taking a leap of faith? I presume that that was based more on enrolment than on formality of vote. Are we taking a leap of faith to say that the education process led to a reduction in formal votes, or do you think they are unrelated?

Ms Bright—I have no way of measuring that and I do not believe the commission would. I think it is part of the campaign that was applied to the 2007 federal election. You might recall that when you went to vote there were some signs outside that stated, ‘This is your House of Representatives paper and this is your Senate paper.’

CHAIR—Was there a lesser number of candidates in Queensland than there were on average in other states?

Ms Bright—No. We had over 200 candidates. In fact, in the division of Leichhardt there were 12.

CHAIR—Okay.

Ms Bright—That is interesting because the informal vote there was somewhat higher than the state average, which I referred to earlier. It was five per cent for the division of Leichhardt. The studies that the commission has done established a correlation—the more candidates the higher the increase in the informal vote.

Mr BRUCE SCOTT—But they do not everywhere?

Ms Bright—That is correct, under the full preferential voting system that we have.

Mr MORRISON—Do those same correlations exist at a state level?

Ms Bright—I am afraid that you would have to ask Mr Kerslake that question, Mr Morrison.

Mr MORRISON—Are you aware of any studies on this issue?

Ms Bright—I am sure that studies have been undertaken, but I am not aware of the detail.

Mr MORRISON—Okay.

Mr BRUCE SCOTT—Was the largest figure in Leichhardt?

Ms Bright—For Queensland it was, yes, Mr Scott.

Senator RONALDSON—Following a question asked by the Chair, I am not sure whether there was a reduction in the number of candidates, but there was quite a dramatic reduction in informal voters.

Ms Bright—I am sorry, Senator, I should go back and finish my answer for you. As well as that, a lot of work was done by the commission in raising people's awareness about how to cast a formal vote. There was information in the householder leaflet; there was a campaign before the election whereby material was translated into languages; and we did some focused work within a number of divisions where, historically, from the previous 2004 elections we knew that we had a problem. So we addressed a particular targeted public awareness campaign in those divisions. A whole array of activities were undertaken to try to reduce the informal rate of voting, and they were successful.

Senator RONALDSON—And were they specific initiatives for Queensland?

Ms Bright—No. In the main they were national initiatives.

Mr Pickering—Senator, they are identified on pages 63 and 64 of our submission, and they go into quite a bit of detail about the extent of the effort to which we went. In drawing conclusions other than an overall lowering of the informal vote it is hard to identify which of those initiatives worked successfully, which ones did not, and which ones had more of an impact than another. For example, there was one example that you would have read about where we asked all polling staff nationally when handing out ballot papers to explain to voters, as they received them and the moment before they walked into the voting screen, how to complete a formal ballot paper for the House of Representatives and how to complete a formal ballot paper for the Senate. That was a new procedure for our polling staff. We are not sure whether that had an effect but we were quietly confident that we could not have any more immediate impact on voters than the moment before they go into the voting screen to reinforce how to complete a formal ballot paper for the House of Representatives and the Senate.

Senator RONALDSON—Were quite specific words given to those poll workers as being the form of words that should be used?

Ms Bright—In their training, Senator, definitely. In addition to what Mr Pickering said, for the first time on the AEC's website for the election—I certainly used this in promoting it to a range of people in the community—you could go in and do a test how to vote, using a sample ballot paper.

Senator CAROL BROWN—There is a difference between the informal vote in your Senate papers and the informal vote in your House of Representatives papers. Are you able to tell the committee how many voters voted above the line in the Senate? I am interested in that. You have a 3.56 per cent informal vote for the seat in the House of Representatives and a 2.34 per cent informal vote for the Senate. Do you have figures for the number of people in Queensland who voted above the line for the Senate?

Ms Bright—I can provide you with those figures, Senator.

Senator CAROL BROWN—That is quite interesting. I am from Tasmania. In the House of Representatives we have quite a low informal vote, but we also have the Hare-Clarke system, so we are used to voting on the way through. It would be interesting to see how many people voted above the line.

Ms Bright—I know that the number of below the line ballot papers that were processed at the central Senate scrutiny were less than last time, which means that more people voted above the line and took up the group voting option.

CHAIR—What was the percentage?

Ms Bright—I will get that for you, Chair.

Senator RONALDSON—A bit of unhealthy prochronism is starting to develop, so I think we need to move on very quickly. I think those attacks on Tasmania by Mr Scott were totally inappropriate, as I have relations who live in Tasmania.

Senator CAROL BROWN—We are very well-organised and well-educated in Tasmania.

Senator RONALDSON—Absolutely.

Mr BRUCE SCOTT—It is a beautiful state.

Senator RONALDSON—I want to take you back to the directions given to those poll workers. I must admit that I have some concerns about the oral engagement of voting between workers and voters. I have some real issues with that. Do you have any information on the exact form of wording? Were they given a bit of paper that indicated the specific words that should be used? I am not heavily into conspiracy theories but there is always some element for inappropriate interference when you cross the room.

CHAIR—If formal words were used perhaps you could submit them to us?

Ms Bright—I will provide that.

Senator RONALDSON—Could you give us some indication about whether the form of words was clearly identified at those training sessions, and whether anything was given to poll employees on the day? If there was not I would be concerned about that.

CHAIR—Mr Pickering can check to establish whether the words that were used in other states were uniform.

Senator RONALDSON—This might well have been raised in other hearings, but I have not heard of it.

CHAIR—That is okay; I have no problem.

Senator RONALDSON—I think a specific form of words would have to be used if there was going to be that level of—

CHAIR—That issue can be looked at.

Senator RONALDSON—I am happy with the principal one; I just have some concerns with the other.

Mr BRUCE SCOTT—At the moment I am interested in the growth of the roll in Queensland. I can recall that, immediately after every Federal election, the growth in Queensland led to a new seat in Queensland. Is the rate of growth in Queensland continuing in the way in which it has in the past? What is the state of the roll at the moment?

Ms Bright—The growth in Queensland is continuing, which is similar to what we have been experiencing over the past few years. The Australian Bureau of Statistics indicated that that trend will continue for a number of years to come. When we look at the roll we find that, as at 30 June this year, it has grown by some 30,000 compared to—

Mr BRUCE SCOTT—Is that 30,000 in the past 12 months, or since the election?

Ms Bright—No, since the election. At present we have about 2.64 million electors on the roll. While that number is very pleasing it is still fair to say that, having regard to the percentage of those people to the population, a few more should be on the roll. Queensland's growth is greater than that. I think everyone would know that when they come into Queensland, in particular at Brisbane airport, that we have a counter up there every day. However, when you see that figure you realise not all those persons are eligible to be on the roll.

CHAIR—There might be some refugees.

Mr BRUCE SCOTT—So those people could be part of a transient workforce, or are they domiciled here?

Ms Bright—They are not Australian citizens; they are people who are just residing here. They are people who have not yet reached an eligible age to be included on the roll or they are people who may have some other capacity issues and, therefore, they are not entitled to be on the roll.

Mr BRUCE SCOTT—That sounds as though we are almost on track. Given the numbers and the determination next year, that could well trigger another redistribution in Queensland, with another seat coming into Queensland.

Ms Bright—It is based on the relative population in Australia. The indications are there that that is possible. We will know that when the commissioner makes his determination early next year.

Mr BRUCE SCOTT—Is it possible that you could have a redistribution without another seat because some seats are out of quota?

Ms Bright—At the moment all 29 are within the acceptable variation quota.

Mr BRUCE SCOTT—Thank you very much.

Mr MORRISON—I commend your office and the commission more generally on the publicity campaign that was run over a period. Clearly, that had a positive result. If that sort of campaign were able to be run more frequently throughout the life of the term of a parliament we would not have the same sorts of issues about the close of rolls. My question is: As you represent the state division of the commission could we run a national roll that applied to both state and federal elections? I am interested in your views about what might be on the agenda for other things that could be coordinated nationally—whether that is election donation returns and that system of things, or more generally where you think the agenda for state and federal cooperation could go next for electoral matters.

Ms Bright—I am sorry, Mr Morrison. Do you mean between the federal Electoral Commission and the various state—

Mr MORRISON—One of the committee's terms of reference is a harmonisation of state and federal. We already have the classic harmonisation in the form of the roll and I would say that that has been fairly effective. I am interested to know practically, as someone who works practically with these issues, how the committee might be guided to encourage further harmonisation.

Ms Bright—I think many issues will be discussed in the green paper. We already have one green paper and there is preparation on a second green paper that will go forward. I understand from reading some transcripts that the committee also intends to get across those issues. No doubt that will require further consideration, and that would then be a matter for—

Mr MORRISON—Maybe I can ask the question another way. In that green paper process—and I understand that the AEC and others are involved in providing some discussion, advice and input into it, as you would expect them to be—have the state offices had an opportunity to participate in that process internally?

Ms Bright—Yes, we do. We have an opportunity all the time to contribute to our policy procedures and to strategic issues facing the organisation and we are encouraged to do so.

CHAIR—Thank you both for your attendance today. I know that there will be some additional material from the Electoral Commission, so we look forward to that. You will be sent a copy of the transcript of today's evidence and you can make any corrections in relation to grammar or fact. Again, thank you very much for your attendance—it is very much appreciated—and for the good work that you are doing.

Ms Bright—Thank you, Chair.

Mr Pickering—Thank you, Chair.

[12.19 pm]

KERSLAKE, Mr David Arthur, Private capacity

CHAIR—I now welcome Mr David Kerslake, the Queensland State Electoral Commissioner, to today's hearing. Although the committee does not require you to give evidence on oath I should advise you that these hearings are legal proceedings of the Parliament and therefore have the standing of the proceedings of the respective houses. If you wish to present an opening statement to the committee please feel free to do so.

Mr Kerslake—Yes, I would like to do so, if that is okay. I begin by making a brief comment about my experience in the electoral field. Currently, I am Electoral Commissioner for Queensland and have been since 2006. I have previous experience working for several years in the 1990s as an assistant commissioner with the Australian Electoral Commission where my responsibilities included national program manager for industrial elections and also the oversight of funding and disclosure. But, as I indicated previously, any views that I put forward today are purely personal. I will divide what I have to say into two parts. Firstly, I would like to make some brief comments about funding and disclosure, which I understand is one of the areas being looked at by the committee, especially the possibility of achieving a greater degree of national uniformity in the rules that apply.

Secondly, I would like to touch on some possibilities for modernising our electoral systems and processes across Australia. I begin with funding and disclosure. I note that most jurisdictions across Australia either have funding and disclosure provisions already in place or are contemplating their introduction. There are a couple of features that I see as essential for such schemes. First, I feel that the threshold for reporting donations should be relatively low. In Queensland the current disclosure threshold is \$1,500. By comparison, I understand that the disclosure threshold in Western Australia is \$1,800. That is slightly higher than in Queensland because in Western Australia the threshold is indexed in line with the consumer price index. Both those figures are relatively low compared with the current cut-off point of \$10,000 that applies for the Commonwealth.

That disclosure threshold of \$10,000 seems to me to be too high. I think that would also have been the view of the Electoral and Administrative Review Commission—the independent body in Queensland that recommended the establishment of a disclosure scheme some years ago. EARC, as it has become known, was set up following the Fitzgerald inquiry. One of its recommendations was the establishment of a rigorous disclosure scheme. When some comments were made at the time questioning the need for such a scheme, EARC responded by saying:

If these motives arose from a fear that attempts at political influence will be exposed, this is in fact the main purpose of a disclosure system.

I think that pretty well sums up why disclosure schemes are important and why the disclosure threshold should be fairly low. The whole idea is that the public can see who is receiving gifts or donations and make their own judgment about the influence that such donations might wield. A donation of \$10,000 seems to me to be well above the level at which the public would prefer to be in a position to make such a judgment. Take, for example, a series of donations of \$10,000 made by, say, four different members of the same family to a political party that has separately

registered branches in each state and territory, and a national branch on top of that. That would amount to a total donation by that family of four of \$360,000—a significant sum by Australian standards—without the source of the donation being publicly known.

Taking into account the potential for such multiple transactions, I consider that a disclosure threshold in the vicinity of, say, \$1,000 to \$1,500, or thereabouts, is closer to the right mark. There is, however, a tenable argument to index that figure in line with inflation, or to appoint an independent person or body to review the threshold from time to time. My second key point relates to public funding. In my view, any public funding scheme should guard against parties or individual candidates being able to make a profit from their candidacy. What I regard as one of the very strong points of the Queensland legislation is the fact that it is a straight reimbursement scheme. The amount of public funding a party or candidate receives must not exceed the amount they spent on their campaign.

My third and final point on funding and disclosure is that consideration should be given to the establishment of a single, national agency to administer funding and disclosure across Australia. That could be achieved through the different jurisdictions working together to adopt uniform legislation. The single administrative body could be either the Australian Electoral Commission or a special purpose body, as in New Zealand. I do not have a strong view one way or the other as to what that central body should be. I do feel, however, that the adoption of uniform rules would certainly make life much easier for those political parties and donors who participate at both state and federal levels.

The regular audits conducted by the central agency would also have uniform application at state and Commonwealth levels—something that is lacking at the moment because of the different disclosure thresholds. I turn now to a few thoughts on modernisation of electoral practices and touch on a few areas where I feel there is scope for the different Australian jurisdictions to work together on electoral practices and reform. The first area relates to enrolment. The Electoral Commission of Queensland estimates that, in recent years, the electoral roll in Queensland has grown by an average of 44,000 a year.

While that sounds impressive, it can be a little misleading to look just at the total number on the roll, especially in a state like Queensland where you would expect the roll to grow just because of the number of people who move here interstate. To my mind, the critical indicator is the percentage of eligible voters on the roll.

At present there are an estimated 390,000 eligible Queenslanders who are not on the electoral roll. This equates to over 10 per cent of eligible voters. Turning that around the other way, at any point in time less than 90 per cent of those who are entitled to enrol are actually on the roll. On top of that, in recent federal elections around 6 per cent of those who are on the roll have not voted in the election. That is a better figure than the participation rate that applies in Queensland state elections, but around 6 per cent of those who are enrolled still do not vote. When you put those two figures together you find that that equates to close to 20 per cent of eligible Queenslanders who are not having their say, by choice or otherwise.

I would not expect the situation to be remarkably different anywhere else around Australia. Here in Queensland—and I emphasise this—both the Queensland Electoral Commission and the Australian Electoral Commission have worked very hard to rectify the situation. For example,

the two commissions have collaborated to obtain educational data to enable us to send birthday cards to 17-year-olds encouraging them to enrol. To its credit, the AEC conducted a major advertising campaign in the lead-up to the last federal election. Data is also obtained from various sources to follow up with electors who fail to notify a change of address. Despite those best efforts, however, the reality is that the proportion of eligible electors on the roll continues to decline indicating that there is a limit to what advertising, continuous roll update and other enrolment initiatives can achieve.

It seems to me that one way forward—and I think the best way forward—is to introduce a system of automatic enrolment. The AEC should be empowered to use reliable sources of data to enrol people automatically when they reach voting age, and also to use such data to update electors' enrolment details automatically whenever they change address. Consideration should also be given to whether the enrolment function should rest with the body that runs the elections, or whether to create a separate national enrolment agency along the lines of the New Zealand model. If the latter model were adopted, the agency could report either to a ministerial council or to a board comprised of all electoral commissioners across Australia. That would give state and territory commissioners more input into roll management than they have at present and provide greater recognition of the \$10 million the states and territories contribute to roll maintenance.

Moving on, there is considerable scope also for increased use of modern technology and for sharing of technical resources between electoral commissions. Some examples include: the use of PDAs, or small hand-held computers, so that each polling booth can have ready access to the entire electoral roll; investigating the feasibility of marking electors off the roll electronically in future; Internet and telephone voting options for blind and vision-impaired electors and other persons with disabilities; and making the defence forces intranet system available for voting by defence force personnel in state and territory elections as well as Commonwealth elections.

These are all examples of where electoral commissions around Australia can work more closely together to develop improved technology. I wish to emphasise that quite a bit of resource sharing already takes place between, for example, state and territory commissions, and there have also been recent discussions about working together in the training of electoral officials, but we can do more. I finish by saying that the capacity to work together would be even greater if every jurisdiction in Australia had fixed-term elections, and each electoral commissioner knew well in advance exactly when our respective elections were going to be held. I conclude on that note.

Mr MORRISON—Thank you for your presentation. You had me all the way until just before the end. You made some interesting suggestions. I appreciated in particular your comments on how things could be harmonised. As you would have heard, that was the subject of my earlier question to the AEC. I am looking at some figures and I want to deal, first, with the issue of optional preferential voting and issues of informality. Previously we heard from the AEC that in the 2007 election informal votes were about 3.56 per cent, which was over a percentage lower than in the 2004 election. The state election informality rate was 2.08 per cent and, more significantly, in 2004, when we had a state and a federal election in the same year in Queensland, the difference in informality was greater than 3 percentage points.

Coming from New South Wales where there is optional preferential voting—and we often have the same sorts of issues with informality—I would be interested in your comments about

how optional preferential voting enables people to express their clear preference, which reduces the rate of informality.

Mr Kerslake—As electoral commissioner I do not have a strong view on what sort of voting system should apply. I regard that more as a policy decision for respective parliaments.

Senator RONALDSON—But you are not appearing as the commissioner; you are appearing in a private capacity.

Mr Kerslake—That is right, and your point is well taken. But even in a private capacity I do not have a strong view one way or the other. My view is that many well-recognised and accepted voting systems appear in democracies all around the world, and they all work in their respective jurisdictions.

Mr MORRISON—Maybe I could put it this way—

Mr Kerslake—It is not for me to say, as a person or as a commissioner, ‘This one is better than that one.’

Mr MORRISON—In your experience does optional preferential voting reduce the rate of informality?

Mr Kerslake—Again, I do not wish to hedge, but I do not know. I do not have the figures from all around the country in different voting systems to be able to make that comparison. However, I make one point. I know that there has been discussion about—

Mr MORRISON—Maybe I can put it this way: Is there a difference in systems at a federal and a state level where one is optional preferential and one is compulsory preferential? In your view does that create confusion in voters’ minds, particularly in Queensland where those two systems may run in the same year?

Mr Kerslake—It can create confusion. One of the solutions to that problem is in the training of our electoral officials. That is one of the reasons why I mentioned earlier that I think more could be done by commissions working together to train their electoral officials. When there is an election in the same year, about 90 per cent of the electoral officials who work in polling booths across Queensland will be working for the state election and for the federal election.

Mr MORRISON—I think that they get paid more for one over the other.

Mr Kerslake—They probably do. If we were able to work more closely together on combined training, although there are different voting systems, you could be emphasising that to the polling officials and equipping them better to cope with those systems and to give better instructions.

Mr MORRISON—So your views on harmonising systems do not extend to voting systems?

Mr Kerslake—As I said earlier, that is a matter for respective parliaments.

Mr MORRISON—My point is that we are going to harmonise. I think your suggestion was about harmonising funding and disclosure through a national body in the same way as we harmonise the roll by managing it nationally. Why does your view not extend to harmonising the voting system to reduce confusion and reduce informality?

Mr Kerslake—I think there is a range of different factors. If you ask average electors whether it would be easier for them simply to have the one voting system and one set of voting instructions, common sense tells you that those electors would probably say, ‘Yes, it would be.’ But parliaments might take into account a whole variety of other factors in determining the best voting system—factors that do not relate just to the elector filling out the ballot paper on the day. There are a range of other factors. There could be equally or more pressing considerations. That is a matter for parliaments to dictate.

Mr MORRISON—In suggesting a single national agency I note that you made reference to what I would consider to be compliance issues. If we are going to go into a different system where there may be more regular reporting, thresholds changed and all the rest of it, the requirement to report—in some cases at a local level, but certainly at a state and federal level with different timetables and different thresholds—I take it you see that as a compliance burden which makes it more difficult for an electoral authority to manage engagement.

Mr Kerslake—In relation to our funding and disclosure?

Mr MORRISON—Yes. You have to manage your system and the federal government has to manage its system. They are both different systems and they are putting burdens on candidates and parties that are different. I imagine that that would impact on compliance in your view.

Mr Kerslake—I looked at it from two different perspectives. I tried to look at it from the point of view of a political party. I looked at it and said, ‘If you have registered branches of a political party in a given state that are contesting a state election one minute and a federal election the next and they have different disclosure obligations and they have to take all the same financial information they have and set it out in quite different ways to meet different rules, that can be very cumbersome for a political party.’ No doubt it would eat into their resources and make it difficult for them to ensure that they are complying with the rules.

Mr MORRISON—In your view, reducing that sort of compliance burden would enhance the level of information that is being received from political parties and made available to the public?

Mr Kerslake—I certainly think it would. Whether or not it would enhance it would depend on exactly what were those uniform rules. It would certainly make it easier for parties to comply. Let me give an example from the point of view of the commission. In Queensland we do not have an audit function. It is not provided for in the legislation and, of course, we are therefore not funded for it. In the past, when the disclosure threshold for the Commonwealth and the state were identical and the AEC was conducting audits, we could look at those audits and say, ‘We are satisfied that the state branch is complying with state legislation.’ When you make the thresholds go way apart we are not in a position to be able to conduct audits and verify that all the information we are getting is correct, and we are not able to rely to the same extent on the AEC’s audits because they have different thresholds.

Mr MORRISON—Sure. So you can have a tough system in Queensland but, if it is not being audited, we have absolutely no idea whether disclosures are being completed properly or whether the rules, as good as they may be, are being flouted or adhered to.

Mr Kerslake—I will answer your question by stating that it would be more helpful if the thresholds were identical or, at least, close to identical.

Mr MORRISON—Does the system in Queensland take account of in-kind donations?

Mr Kerslake—Yes.

Mr MORRISON—What arrangements are made for them?

Mr Kerslake—Parties have to put a value on any donations that they receive.

Mr MORRISON—Is the disclosure threshold the same?

Mr Kerslake—No.

Mr MORRISON—Just give me a ballpark figure.

Mr Kerslake—The disclosure threshold is different, depending upon whether you are talking about gifts to candidates or gifts to parties. But it is the same whether it is a donation or in-kind donation.

Mr MORRISON—The New South Wales upper house inquiry put out a fairly comprehensive report. One of its recommendations was to ban in-kind donations full stop. A concern was registered—I hope I am not verballing the witness at the last hearing—that in banning in-kind donations you effectively cannot manage what you cannot measure. As a result, when there is no requirement to register your in-kind donations in any way, you will have no way of knowing what is going on at all, in particular, as you say, if there is no audit capacity and, beyond that, if no investigative resources are put behind commissions, any other authority, or the federal or state police. I am interested in your view on in-kind donations and whether you think there should continue to be a disclosure system for in-kind donations to keep a handle on what is happening there.

Mr Kerslake—I would not make any distinction between in-kind donations and normal donations in that regard.

Mr MORRISON—You have been monitoring expenditure through your system which, as you say, does not allow candidates to make a profit out of running for office. What has been your observance of the trends and increases for expenditure in election campaigns at a state level in Queensland?

Mr Kerslake—I do not have available the figures on that, Mr Morrison, but I could take that question on notice and give you advice about that.

Mr MORRISON—That would be helpful. I am interested in your views as you have some interesting suggestions about the funding and disclosure side. Do you have some views about the suggestion of opposing caps on election expenditure as a way to address the demand side of the election donations equation rather than just the supply side?

Mr Kerslake—Again, I would put that in the same category as some other questions I answered by saying that essentially I think that is a policy decision for parliaments to determine.

Senator RONALDSON—With great respect, I am not prepared to accept that. You have given a policy view in relation to disclosure.

Mr Kerslake—Fixed terms?

Senator RONALDSON—Yes. On that basis, having appeared here as a private individual, you cannot pick and choose which subjects you talk about in a policy sense. Your comments relating to disclosure were clear policy comments. With the greatest respect, Mr Kerslake, you cannot walk in here and make decisions about which one it is.

CHAIR—Senator, you have made your point. He can answer what he wants to answer and he can decline to answer what he does not want to answer, if he chooses to do so. He is asking you, in effect, to reconsider and he is asking you whether you would offer an opinion. Senator, you have made your point, but I will not compel the witness to answer. If the witness wants to answer he can.

Mr Kerslake—I would like to make a couple of points in clarification. In my introductory submission I was very careful to refer to the comments that EARC had made in recommending the system. I was very careful when I was referring to them. I also made a statement about open disclosure. The more transparent the system is the better. But that is not the same as me saying whether people should or should not be allowed to make donations. All I am saying is that assuming they are allowed to make donations everything should be as open and transparent as possible. That is where I start and finish.

Mr MORRISON—Do you have a concern about the rising level of political donations in Queensland?

Mr Kerslake—Donations of political parties?

Mr MORRISON—Yes. Elections are getting more expensive every time. As long as you can spend as much as you physically want in an election do you think that gives rise to a rather unhealthy situation where political parties are put in a position of having to raise as much money as they humanly can in order to remain competitive in our electoral system?

Mr Kerslake—The point that I raised and that EARC made strongly—which I support—is that when those donations are made, if there is any possible perception that donations are made and they come with strings attached, the donations need to be absolutely transparent. People need to be able to see where they come from and the public needs to be in a position to make its own judgment.

Mr MORRISON—We are talking about election expenditure in New South Ways of, say, \$16 million and that does not come in \$1,000 lots. Those donations are already over the disclosure threshold and now they are all openly disclosed. But the issue is in order to get to \$16 million you have to raise them in those large chunks. Frankly, disclosure issues will have no impact at all on the type of behaviour. In your opinion do you think election caps on expenditure might provide a positive way of moderating the environment to ensure a more moderate electoral climate?

Mr Kerslake—I again see that as a policy decision for the parliament to make.

Mr MORRISON—So you have no personal opinion?

Mr Kerslake—No.

Senator CAROL BROWN—I want to go back to the percentage of eligible Queenslanders who are not on the roll. I think you said that it was about 10 per cent.

Mr Kerslake—A little over 10 per cent.

Senator CAROL BROWN—Has the Electoral Commission done any work to try to identify whether certain groups of people are not on the roll?

Mr Kerslake—In those figures I think our estimates were 50,000. In the 18 to 25 year age group about 50,000 young people reach enrolment age each year in Queensland, but only about 25 to 30 per cent of them enrol when they are first eligible. So there is a significant number in the 18 to 25 year age group. One of the interesting issues there, when you are trying to do public education and so on, is at what age do you tackle that group? As a former schoolteacher in a former life who taught 17-year-olds and 18-year-olds in a college in Tasmania, in some cases at the age of 17 and 18 they have already made up their minds whether they wish to be recalcitrant or whether they wish to participate and so on. We need to do a lot of work there but the question is: How much more work should we be doing at an earlier age to try not necessarily to enrol people but to catch their imagination at an earlier age.

CHAIR—Do you see any benefit in a provisional enrolment at the age of 16 as against the age of 17?

Mr Kerslake—I feel that there could be a benefit in provisional enrolment at the age of 16, yes. You are getting them perhaps at a slightly more compliant age, although I do not claim to be an expert in that regard. I do not believe that it necessarily would do any harm by doing it earlier.

Mr BRUCE SCOTT—That would be a policy issue, Mr Chairman.

CHAIR—I am sorry; I do not think it is a policy issue.

Senator CAROL BROWN—Mr Kerslake, have you identified any other large groups?

Mr Kerslake—The age group on which we have been particularly focusing is 18 to 25. But, as time proceeds, I think all the figures suggest that that age group of 18 to 25 is becoming 18 to 30, or 18 to 35.

Senator CAROL BROWN—Do you have a capacity for the enrolment of people with no fixed abode?

Mr Kerslake—Yes.

Mr BRUCE SCOTT—My question, which is about numbers, follows on a question asked by Senator Brown about the number of people who are on the roll but who would be eligible to vote. Is there any evidence to suggest that these people are conscientious objectors to compulsory voting and they would rather be optional voters, as in the British and American systems? That might be their way of expressing it.

Mr Kerslake—Some of the studies suggest that a proportion of voters in that category are what we sometimes refer to as recalcitrants who, for whatever reason or the other, have made up their minds that they will not participate in the system. I do not know—I would have to check—whether the studies reveal that any more belong to that category in the younger age group than is the case across the entire population. I think there is some evidence that has been done in studies to suggest that some younger people are becoming decreasingly turned on by politics, if I can put it that way. It is not just up to electoral commissions or educational authorities—I throw the ball back into your court—it is also up to political parties to continue to make themselves relevant in the way in which they campaign with that age group and so on to engage that demographic.

Mr BRUCE SCOTT—Is there any region in Queensland or any socioeconomic category, if I can put it that way, that might fall into that group of people who do not want—

Mr Kerslake—I am not aware of any studies that have been done in relation to that.

Mr BRUCE SCOTT—City verses rural or regional?

Mr Kerslake—The Queensland Legal and Constitutional Review Committee undertook a study of which you would be aware—Voices and Votes—but I am not sure whether that study extended to looking, other than anecdotally, at that area.

Senator RONALDSON—Mr Kerslake, you commented that you thought that EARC's view on the disclosure levels would not be supported at the current level. I take it that you have nothing on which to base your comment?

Mr Kerslake—I quoted a comment from it and I am simply extrapolated from it that it is certainly in favour of a rigorous and transparent—

Senator RONALDSON—But you have no idea of EARC's view on \$10,000 donations?

Mr Kerslake—No, I gave an example to back that up.

Senator RONALDSON—You then went on to say that voters would think it was high. You have no justification for that comment, have you? You have no evidence for that?

Mr Kerslake—I am a voter.

Senator RONALDSON—Okay; I am happy to play that game. We will play that game.

CHAIR—Before you go there, Senator Ronaldson, let the record show that Mr Kerslake came here at our invitation as a private witness, understanding that he holds another position. However, we sought his advice. I do not have a problem with you asking him questions. I just ask that it be done respectfully.

Senator RONALDSON—Quite frankly, I think I have been very respectful. You, as a voter, hold that view, but you cannot speak on behalf of the voting population, which you attempted to do today?

Mr Kerslake—No. I was not attempting to speak on their behalf.

Senator RONALDSON—Well you did. If you look at the record I think you will find that you did.

Mr Kerslake—I was referring to comments that EARC had made. I also used the example, which I reiterate for the record, that if a group of people, whether it be a family or any other group, make combined donations they can make significant donations that I believe the public would want to be able to identify and form their own judgment on.

Senator RONALDSON—Is that on the back of concerns about level of influence, for example? Is your concern in relation to that?

Mr Kerslake—Sorry?

Senator RONALDSON—Would your concern be in relation to the level of potential influence?

Mr Kerslake—I am not saying that they necessarily would have an influence on those donations; I am saying that there could be a public perception—

Senator RONALDSON—There is the potential for it.

Mr Kerslake—There is a public perception that they could, and they would like to make their own judgment.

Senator RONALDSON—Thank you for that. On the back of that is the perceived level of influence. Would that apply also for corporate donations, union donations, other third parties, associated entities, et cetera? Would you have similar concerns about that?

Mr Kerslake—The principle applies across the board.

Senator RONALDSON—On that basis would you then support a ban on donations from corporations, unions, third parties and associated entities?

Mr Kerslake—As I indicated before, that is a different issue. That is a policy issue. Wherever those donations come from, there should be absolute transparency in relation to them.

Senator RONALDSON—Mr Kerslake, I am sorry. Your discussion about disclosure levels was a policy discussion. You cannot cherry pick which questions you answer. The disclosure issue, the corporation issue, the union issue, and the third parties and associated entities are all one and the same thing. What is your view in relation to those matters?

Mr Kerslake—My view in relation to those, which I have already put to the committee, is that the donations should be absolutely transparent.

Mr MORRISON—So you have no personal opinion on this other matter? Effectively, if I understand Senator Ronaldson's question, he is asking you for your opinion on this. If your opinion is that you have no view on the policy—

Mr Kerslake—My opinion is that those are matters for the parliament of the day to decide. Those are issues on which every member of the community is entitled to have his or her say. I am here in a personal capacity, but I also happen to be an electoral commissioner. Therefore, I do not go out there and comment publicly on—

Mr MORRISON—That is fine. I think the only point that Senator Ronaldson is trying to make is that you have expressed personal opinions on some policy issues and you do not have personal opinions on other policy issues. I think that is a fair statement.

Mr Kerslake—I have already put forward my views. I am not sure how many other ways I can say it, to be honest.

Senator RONALDSON—Earlier we had some discussions with Ms Bright and Mr Pickering about the Queensland Department of Transport. Were the enrolment forms and the contact with the Queensland department generated with your assistance or with the assistance of your office?

Mr Kerslake—One of my directors works more closely with the AEC. I am not sure whether it was specifically in relation to the Department of Transport. We have assisted in number of areas to use our good offices to obtain access to data. I am not sure specifically about the Department of Transport. If that is what Ms Bright has indicated I am sure that would be correct.

Senator RONALDSON—This might not be the right way of doing it, but Ms Bright is still in the room. Was this AEC initiated?

Ms Bright—Yes, Senator.

Senator RONALDSON—For the record, Ms Bright, who is not at the table, indicated that it was an initiative of a Queensland division of the AEC and not an initiative of the Queensland Electoral Commission.

Mr Kerslake—We have worked with the AEC to encourage government agencies to provide access to data and, where possible, to do so without the AEC needing to use its formal powers to obtain it, if it can be done in another way.

Mr MORRISON—Are you aware of any research that has been done, or any reports of Queensland state elections, that look at the number of candidates and the rate of informality?

Mr Kerslake—I am not sure of any specifically. They may have been done before my time. I am happy to take that question on notice.

Mr MORRISON—If you could I would be grateful. I require the rate of informality and how it relates to the number of candidates in optional preferential elections.

Mr Kerslake—Whether it increases or decreases in relation to the numbers?

Mr MORRISON—Whether it has a difference or no difference on the number of candidates. That would be helpful.

CHAIR—I wish to ask you a question about proof of identity, Mr Kerslake. Do people need to prove their identity in order to get on the roll at a state level in Queensland?

Mr Kerslake—At present Queensland legislation mirrors Commonwealth legislation.

CHAIR—Thank you for your attendance today. You will be sent a copy of the transcript of your evidence, to which you can make corrections of grammar and fact. We appreciate your attendance in a private capacity today. Again, it should be understood that the committee asked you to come along in a private capacity because we value your expertise.

Mr Kerslake—Thank you Mr Chairman. I enjoyed it.

Mr BRUCE SCOTT—I refer to pages 13 and 14 of our documents. I am not quite sure what relevance they have.

CHAIR—I will tell you their relevance privately. I seek a resolution that the committee authorise publication, including publication of the parliamentary database of the proof of transcript of the evidence given before it at the public hearing today. There being no objection, it is so resolved. I declare the public hearing closed.

Committee adjourned at 12.58 pm