COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

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

FRIDAY, 20 NOVEMBER 2009

CANBERRA

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JOINT STANDING

COMMITTEE ON ELECTORAL MATTERS

Friday, 20 November 2009

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

Members in attendance: Senators Birmingham and Ryan and Mr Melham, Mr Morrison, Mr Bruce Scott and Mr Sullivan

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

Committee met at 9.19 am

CHAIR (Mr Melham)—I welcome participants in this roundtable public hearing on the second electoral reform green paper. On 23 September 2009 the Special Minister of State, Senator the Hon. Joe Ludwig, released the government's second electoral reform green paper, entitled *Strengthening Australia's democracy*. Whilst the first green paper focused on donations, funding and the expenditure framework, the second green paper canvasses broader reforms of Australia's electoral architecture. The minister stated that the options raised in this paper aim to deal with the changes occurring in our electoral environment, including changes in population and technology, and opportunities for streamlining laws between the Commonwealth and the states and territories. The key issues raised for public comment include current arrangements for elections in Australia, the definition of who is entitled to vote in Australian elections, maintenance of the electoral roll and close-of-roll provisions, arrangements for casting of votes at elections, and processes for the counting of votes and determination of election results.

The minister has asked the committee to contribute to discussion on the issues raised in the green paper and this roundtable hearing provides an opportunity for the committee to hear the view from a range of groups and individuals and then provide the transcript to the minister for his consideration. The roundtable is divided into six sessions as shown in the program booklet which has been circulated. The final period is an open session which, if necessary, will provide an opportunity for participants to raise any issues that have not been previously discussed.

What I hope to do today is to encourage some free-flowing discussions. However, you should direct any remarks to the committee or other witnesses through the chair. Again, thank you for your participation today.

[9.22 am]

BAILEY, Ms Brenda, Senior Policy Officer, Public Interest Advocacy Centre

BRENT, Mr Peter, Researcher, Democratic Audit of Australia

COSTAR, Professor Brian, Coordinator, Democratic Audit of Australia

GREEN, Mr Antony, Private capacity

JOHNS, Dr Gary, Private capacity

MURRAY, Mr Andrew, Private capacity

MUSIDLAK, Mr Boguslaw Czeslaw (Bogey), President, Proportional Representation Society of Australia

WILLIAMS, Professor George, Private capacity

Evidence from Mr Murray and Dr Johns was taken via teleconference—

CHAIR—Could each of you make a short, 60-second opening statement. I think you have all got the blue booklet and I want to try and stick to that. I am obviously interested in as much interaction as I can get, without people dominating in long slabs.

Mr Murray—As you know, Chair—and hopefully your participants know—I have put in a very lengthy submission to the Australian government. I have covered off only parts of their paper. I have spoken on the Australian Constitution, harmonisation, a unitary system approach, franchise, political governance, representative systems, direct democracy, electoral management bodies, truth in political advertising by political parties, and postal votes.

I suppose if I were to talk about just one area which is of interest, I think, it would be whether a national system should be introduced which would cover off three of what I regard as the four main parts or categories of electoral matters.

Mr Green—I think that some interesting discussion has begun about new ways to update the electoral roll and more modern ways of dealing with the current, rather antiquated paper based procedures. I have a particular interest in the voting systems and about trying to lower the level of informality and perhaps dealing with things like optional preferential in the lower house. I do think the electoral system for the Senate is wide open for reform and that something needs to be done with problems that go on with the Senate.

I also believe that there needs to be something done about the regulation of political parties. In particular, the rules put in place 25 years ago were very loose for the registration of political parties and I think we have seen some abuses by the smaller parties in terms of nomination procedures and general internal kerfuffles within quite small political parties.

Prof. Williams—Thank you, Chair, for the opportunity to appear at this round table today. I would like to start by recognising the strengths of the system. I think we ought to acknowledge that the system generally works very well in Australia and also recognise the good work of the Australian Electoral Commission and the fact that we start from a very high point in this debate that is not the case in many other countries. In whatever reform agenda we discuss, we do need to preserve those strengths and keep that in mind. That said, I think it is also fair to say that the system must keep up with the times and a lot of time has passed without significant reform. The act is showing its age. The fact that there has not been a significant set of changes to the act since 1984, I think, is problematic. A quarter of a century has passed and along with that some enormous changes in electoral and other technologies and also in the way things are now being done overseas. My view is that, unless we do adapt at this point, we risk the strengths that we do very much value in the system.

There are many things I could point to that I think need general revision. They include issues of harmonisation, particularly technological shifts that need to be reflected in the act. I would prefer to see the act being technology neutral as opposed to prescriptive with regard to many of the provisions. But the big one I would put on the table that I think ought to be of the highest concern is the fact that we have 2.3 million people who at the last election did not appropriately exercise the franchise, and they included 1.1 million Australians who are not enrolled even though they ought to have been enrolled under the legislation. That goes to about 10 per cent of people all up who are not appropriately involved in the system. The problem of informal voting is also a large part of people not exercising the franchise.

The two reforms that I am particularly interested in look at, firstly, automatic enrolment as reflecting a compulsory enrolment system; and, secondly, harmonisation of voting systems in a way that will reduce the level of informal votes and also play more effectively to the education of voters of how to take part in the system.

CHAIR—Thank you, Professor. The first topic is the legal framework for elections and the franchise. The challenges and options for reform identified in the green paper focus on harmonisation and modernisation of the electoral laws. In relation to harmonisation, the green paper noted that it can offer a range of benefits, including creating efficiencies by reducing duplication across different levels of government, ensuring greater certainty if consistent rules apply across all jurisdictions, reducing compliance costs for those who must comply with multiple regulatory regimes across jurisdictions and improving the effectiveness and integrity of laws by removing regulatory inconsistencies.

In relation to the franchise, the green paper discussed the degree to which eligible persons exercise their right to vote. In addition, the green paper examined the arguments for and against allowing noncitizens to vote. I would like to invite each of the participants to comment on these issues. George, do you want to go first? We will keep reversing the batting order, I think.

Prof. Williams—That is fine. I am happy to put some issues on the table initially. I think that the act does need reform when it comes to the basic issue of the franchise. I think that the act should be very clearly defining the franchise according to Australian citizenship. I think it is time to move away from the grandfathering provision that enables British subjects to vote. That was an appropriate thing to have done 25 years ago but today we should be approaching those people and inviting them to become Australian citizens, to which they would be entitled. If they do not

wish to take up Australian citizenship then I think it is appropriate that, as in other countries, they do not vote in Australian elections. I would like to see the voting rules tied much more tightly to Australian citizenship than they are at the moment.

The other issue I am happy to put on the table is about Australian expatriate voters, which has been a subject that this committee has looked at on a number of occasions. I would like to see a liberalisation of the rules there, again reflecting my view that we should be focusing on Australian citizenship. We need to not only look at better education of expatriate voters, given the relatively few citizens who take advantage of that capacity to vote but also look at following countries like New Zealand and elsewhere, which have a more liberal regime in recognising that many citizens now spend significant times overseas and the system should make a greater effort to enable those people to vote within national elections.

CHAIR—We have just been joined by Professor Costar and Mr Brent. I do not know whether Gary Johns has joined us yet. But we will go to Andrew Murray, who is on the telephone. We are on topic 1 and we have only just started, gentlemen.

Mr Murray—Which issue would you like me to kick off on—the legal or the franchise side? Probably the franchise.

CHAIR—Yes, the franchise, if you want to begin with that.

Mr Murray—I think I would summarise franchise this way: franchise is a universal—

CHAIR—We are having trouble hearing you, Andrew. Can we turn it up again?

Mr Murray—The issue with franchise is that it should have a universal, common and standard application in the law in Australia—no differences between state, territory and federal jurisdictions. That particularly affects prisoners and the way in which they can vote. It also affects those who are disenfranchised by the system. Your own report indicated that about one million voters miss out on the franchise—and that is a major issue if the systems do not coordinate to maximise the number of votes.

The second point is that citizenship has to be the dominant criterion and the only qualifications should be with respect to age and mental capacity. I have made submissions on that, which I can expand on if you wish.

The other major issue is to do with the overseas focus. That should be the liberalised. Anyone who is an Australian who lives overseas can vote and forget about the circumstances of their being overseas. Just let them vote. I do not think that there is any danger of us being swamped by overseas voters voting in our elections.

CHAIR—Andrew, we are just having a bit of trouble with the sound. We might disconnect you and then try and reconnect you on a better line.

Mr Murray—All right.

CHAIR—I just think it is torturous to continue the way that we are going because it is garbled.

Mr Murray—I can hear you clearly but you obviously cannot hear me.

CHAIR—We are having problems with you so we might have to check another line for you.

Mr Murray—All right.

CHAIR—I will disconnect you for the moment and continue with the hearing and then bring you back in at a time that is convenient to Hansard. I am sorry about that, but we want to hear your contribution. We have just been joined by Mr Boguslaw Musidlak from the Proportional Representation Society of Australia. I will bring you in on the session on voting systems. Mr Green, would you like to make a comment?

Mr Green—I would rather address the legal framework.

CHAIR—That is okay.

Mr Green—I think there are aspects of electoral laws from state to state which vary for no good reason. Differences in postal voting rules between states and territories just cause confusion for voters. The Commonwealth has things like permanent postal rolls. They have only just been brought in in New South Wales, and I think that is a sensible alignment of the rules in that area. Different states have different rules for registering how-to-vote cards and some of them are far too prescriptive. Other states prefer not to do anything of the sort. The Commonwealth does not regulate how-to-vote cards, apart from saying that authorisations must be included. There are different rules for handing out how-to-vote cards and where you can do it and how far you must be away from the polling place. I think a number of those rules should be sorted out between the different territories because it causes confusion for party workers who turn up to do something that they have done at the last state election and are told by the Commonwealth that they cannot do it because they are too close to the polling place. There is a lot of that sort of regulation.

Regarding the regulation of political parties, we have pretty much the same set of political parties across the country, but they have to be registered differently in the states and the territories and registered as state and territory branches. That causes overlap, it causes confusion about the registration of parties and it causes problems for the public funding and public disclosure laws, because they have to deal with legislation at two different levels when they are often dealing with exactly the same organisation.

CHAIR—We are basically looking at each topic now. We are just on the first topic—the legal framework for elections and the franchise. I propose to work through that blue book which we sent you, and once you have finished your initial contributions I will pass over to members of the committee to ask you questions.

Prof. Costar—Before I do that, could I just say that I provided the secretariat with three papers yesterday electronically, and I wonder if they could be tabled—not necessarily for today but for future reference.

CHAIR—Yes. I had this discussion with Professor Costar. I attended a workshop last week at Melbourne university, and some very good papers were delivered that were consistent with our roundtables, so I will get those distributed to members of the committee and they can form part of the exhibits that we forward on to the minister. If you also want to, at this stage, take 60 seconds to give us your overview—

Prof. Costar—Just very briefly, I do not claim to be an expert on the legal framework. There is someone sitting to my left who is much better positioned to do that. But one thing we suggested in our brief submission was that consideration should be given to a restructuring, if you like, of the Commonwealth Electoral Act along the lines of what has happened in a number of states recently—New South Wales, Queensland and Victoria. I am not suggesting here that the entire electoral system should be changed; that is a matter of discussion and recommendation, and we all have views on various parts of it. The act, as we all know, dates back originally to two acts of 1902, consolidated in 1918. We have then had additions as we have gone on: a couple of big ones—1948 and 1983—and myriad smaller ones. Just by looking at the act you can see, from the table of contents, that really there is no apparent logic to it. It starts off, apparently, with a structural logic, and then of course it reflects its history and goes off picking up all sorts of diverse issues.

I am sure the members of the committee are aware of the way the other acts have been structured, but if it would help I have here the table of contents of the Victorian one, which I think shows a greater logic for someone looking for things in the act.

CHAIR—Do you want to quickly put some of that on the transcript? We can incorporate that as an exhibit.

Prof. Costar—Sure. Not surprisingly, I had the Victorian one to hand, but the Queensland and New South Wales ones are the same, and that may be the case for the other states—I am not that familiar with them. It starts off with a preliminary section and then goes to the Electoral Commission, enrolment, registration of parties, electoral procedures and so on. Its virtue is its clarity. For someone coming to the act wanting to find out, for example, whether it really says that you must cast a vote, it can be difficult to find that.

CHAIR—So you reckon the Victorian model is a reasonable model?

Prof. Costar—It is a reasonable model, and I think the other states are the same. So, if I can just table that, that is my only contribution.

CHAIR—I will get someone to receive that. We have just now been joined by Ms Brenda Bailey. We are talking about the legal framework for elections and franchise, topic 1.

Mr Brent—I will make a broad, brief statement. I hope it will fit in with the point that we are looking at. I think it is important to count the preferences or the votes of as many people as possible or at least of as many people who want to express their vote as possible. The two ways to do that are, firstly, to have as comprehensive an electoral roll as possible and, secondly, to eliminate accidental informal votes as much as possible. The two methods by which you can do that are automatic enrolment and optional preferential voting. They both have issues that I am sure we will come to but, if both of those were adopted, the numbers would change dramatically.

With respect to uniformity across the jurisdictions if we could have OPV everywhere, that would certainly decrease the amount of informal voting in all jurisdictions, but we are dealing with the Commonwealth law here so OPV, optional preferential voting, would minimise the number of informal votes.

Senator RYAN—With the perspective of potentially removing eligible UK citizens or subjects, won't this problem just take care of itself? There are 150,000 people out of 13-odd million. They would be substantially older than the average population. Won't that problem just take care of itself? I have not seen the figures as to how quickly they are declining. I do not mean to be too macabre about this. It seems like a problem that time will address.

Prof. Williams—It would be addressed in time simply through natural attrition but firstly to address the start of the question it is not just United Kingdom voters it is in fact British subjects, which includes people from 48 Commonwealth and former Commonwealth countries. It includes India, Malaysia, New Zealand, Jamaica, Zimbabwe and many other nations. Yes, it would, but we are dealing with a significant percentage of the franchise—about 1.2 per cent. It was put in in 1984 with a view that it would be a grandfathering provision, but the expectation at the time was not ironclad in the sense that it had to go for ever. It was a way of managing this issue.

At some point my view is that it is appropriate to say that the franchise should be drawn back to the concept of citizenship. It is also important to remember these people can become citizens. We are not saying, 'We don't want you to vote.' We are saying, 'You should become Australian citizens'—which is the appropriate course in any event—'and in doing so you can maintain your voting right.' At the moment there is a special category there which is very hard to justify. It is something that has been there for a long period of time and as part of reviewing the legislation it is appropriate to give them a fair chance, may be a period of years. I am not saying that I would do it quickly but over a period of time instead of saying, 'Let's wait for what could be another 30 or 40 years for that class of people to completely remove themselves from the roll.'

Mr MORRISON—I am not a fan of special deals, but when you have one you should acknowledge it and stick to it. What we had in 1984 was an arrangement that was put in place and which people accepted in good faith. I do not know how some years later the Australian government can then turn back on that. As Senator Ryan says this deal, this arrangement, will eventually work itself through the system. I do not know what the great danger is here. I assume if people thought there were dangers in going down this path, they were considered at the time. The arrangement was put in place. I think people have a legitimate right to expect that the Australian government will stick to those terms and conditions.

Mr Brent—A deal implies that, if you do this, I will do this. It was not a deal.

Mr MORRISON—Let's call it an arrangement—a non-extraordinary one.

Mr Brent—That is an argument for never changing the laws about anything. Would you not have changed them in 1984 because people had a certain understanding?

Mr MORRISON—That is not what I am suggesting. I am saying that the arrangement was put in place and that people accepted it. They were comfortable with the fact that it would be dealt with over time. I am just finding it hard to understand what the great mischief is here.

CHAIR—I will just come in at this stage, given that I made supplementary remarks. I want to put the view so that we can then discuss it. Some things have happened since 1984. The Australia Act 1986 had a significant impact in terms of British subjects, because we know from Heather Hill's case of 1999 in the High Court that British subjects are now regarded as aliens. So that is post 1984. And we also have dual citizenship.

My view in this argument is that the status of British subjects fundamentally changed with the High Court's observations in Heather Hill's case in regard to what the Australia acts meant for British subjects. It means that they cannot run for parliament per se, and so cannot others. My second thing is, as I said, I did not want to do it overnight but I felt that you give people time to take out citizenship and still keep their British citizenship. You may think that is harsh but if you are an Australian citizen going overseas and you do not do certain things within six years as an Australian citizen, you lose the right to vote. Why shouldn't an alien who after 30 years does not take out Australian citizenship lose their right to vote? Alternatively, as I think the green paper says, why shouldn't it apply to all permanent residents? So those are the issues. I just wanted to put them on—

Mr MORRISON—There is a grandfathering arrangement in place. The idea behind a grandfathering arrangement is that it effectively is worked out over time. The chair raises some points about inconsistencies and so on but that was not known at the time. As a result, I struggle to see how this one issue is bringing our system of democracy to its knees. I cannot understand the great focus on this matter when there are far more important issues out there.

Prof. Costar—We are obviously going to come to a lot of important issues during the morning. As part of doing research for a paper delivered at the seminar that the chair spoke about, I went back to have a look at the *Hansard* to find out what was the motive behind this grandfathering clause, and it is a bit like going back to the old *Hansard*s trying to find out what the rationale was for introducing compulsory voting. The record is amazingly thin. There is almost no parliamentary debate about it at all. The minister's second reading speech simply mentioned it and just went forward. There was some debate in committee but that was produced by a misunderstanding by a Tasmanian then-MHR, who has just announced his retirement from the state parliament, who said that he thought that British citizens were going to have the vote taken from them. He had misunderstood it. He said this was all a product of the socialist Hawke government's anti-Britishness which, given subsequent events, was an interesting turn of phrase. So, in a sense, if there was any arrangement, it was a fairly covert one. It was not out in the open. My suspicion is that there were bigger fish to fry. The government probably thought, 'This has the potential to be diversionary; let's just grandfather it and time will take care of it.' But time has not taken care of. It is amazing how few people have been taken off the British subject notation part of the roll. What is it—five in the last 24 years?

Senator BIRMINGHAM—Professor Costar, in my limited two years or so of experience in this place, the issues where very little debate takes place and where there is very little record on the public *Hansard* are the issues were there is broad agreement, and that—

Prof. Costar—I am sure there was—

Senator BIRMINGHAM—Aside from the learned Mr Hodgman, I am sure that the rest of the members would have engaged in the debate or thought it was a sensible way to deal with an issue that existed at the time. The question today is: why is it any less sensible to not let that grandfathering arrangement be seen through to its ultimate logical conclusion?

Mr Green—I think it was eminently sensible to do it in 1984. If there are 150,000 now, I do not know what the numbers were then, but I suspect you are talking over half a million people.

Prof. Costar—No, 160—

CHAIR—There are 163,000.

Mr Green—Sorry, but anyway—

Prof. Costar—The drop has been minuscule.

Mr Green—Has it? Well I just don't see there is a huge—

CHAIR—They are following the Queen; they live long.

Mr BRUCE SCOTT—I was just going to say, presumably if the—

Mr Green—What I will say is that that is the record—

CHAIR—One at a time, please. Mr Green?

Mr Green—Those are the numbers that the AEC has a record of. I would like to know: does the AEC know the citizenship of everyone on the roll in 1984? I do not think they do.

Mr BRUCE SCOTT—That is a very good question. That allows us to understand whether there is a big group out there or a very small group.

Mr Green—If someone was on the roll in 1948 continuously, there was no such thing as Australian citizenship then. There would be thousands of people on the roll who are British citizens that the Electoral Commission have no record of. I am sure they did not collect those details before—

CHAIR—What we know is that these are the ones that have notations. I think the point you make is very valid.

Mr Green—You can pursue those people but you will not necessarily record everybody.

CHAIR—I am going to bring you in here, Mr Murray, because you are the bloke that started this with evidence in our hearings in Perth.

Mr Murray—I am a troublemaker, as you know! In brief, people will take sides on this. I agree with the remarks of Professor Williams and the chair. There are two key issues. The first is that British subjects were not aliens and they now are. Secondly, there was no provision for dual citizenship and there now is. Any British subject that values his participation or her participation on the roll can easily take out dual citizenship and lose none of the attractions of a British citizenship. I think the chair's phased approach to ending what is an unacceptable ability for aliens to vote in our elections is a good one.

Senator RYAN—I was going to get to this point. I do not think the AEC would know the citizenship of everyone on the roll, unless someone has presumably changed the details of their enrolment and ticked the box. There would potentially be people on the roll who are grandfathered who the AEC may not know are British subjects rather than Australian citizens.

Mr Green—I would have gone on the roll in 1978 as a British subject rather than an Australian citizen. I have got no idea whether the AEC has changed my notation since.

CHAIR—Are you declaring an interest here?

Mr Green—No. I am an Australian citizen. It is not a problem now.

Senator RYAN—If we get past the issue that some people have an issue with this, statistically, presumably if we have stayed at such a high level that means at some point the numbers would fall off a cliff. They will start to decline relatively rapidly if we stay constant for a long period of time. It would also strike me that to remove the grandfathering, if there were British subjects that were on the roll but were not noted as such and they remained on the roll purely because of a flaw in the AEC's data, that would be a much greater discrimination than the one we are talking about now.

Mr Green—It is not a flaw in the data. Once upon a time we just did not draw a distinction.

Senator RYAN—A lack of data might be a better way to describe it.

Prof. Costar—We do make the distinction now. I will send this to the committee. There was a report in one of the local Dandenong newspapers this week of a person who had lived in Australia for quite some time. He was a World War II veteran. He moved address, filled in an enrolment form and had it rejected because he was not an Australian citizen. He had immigrated to Australia at some point from South Africa and his enrolment was declined. It was all sorted out and he was re-enrolled. The interesting point is, I suspect that Mr Green is right. If you go back to 1984 there was no need to make the distinction because the requirement was to be a British subject or a naturalised person, as they called them, whereas now it seems that the AEC does have very good data on who are Australian citizens. But of course they have to engage in an enrolment act. If he had not shifted house that would have just gone on.

Senator RYAN—This is one of the concerns I might have—you could have people staying on by virtue of their not having performed a task that would alert the AEC to them having been a British subject. That would be a significant problem, would it not, to be striking some of these people out of a grandfathering provision but inadvertently leaving others on?

Mr Green—I thought some of the argument in the eighties was they did not know how many noncitizens were on the roll and that is why they did not strike off the ones they did know.

CHAIR—My ultimate concern is that aliens can determine who forms government. Our report states that eight electorates have 2,000 and above and 62 electorates have 1,000 and above. I think it is all there now and it has been good to have that on the record so that it is all in the mix now.

Senator RYAN—I have a question about optional preferential voting. I appreciate the arguments outlined. Do any of you have any comments on the view that optional preferential voting could potentially lead to more plurality rather than majority preference governments? One of the strengths of the Australian system, in my view—comparing it to overseas systems—has been that we extract a two-party-preferred majority that leads to a more widespread view, I think, about the potential legitimacy of government and its functions. Does anyone here have a concern that, if you start having optional preferential voting, you will probably end up more often than you do now with plurality governments rather than some construction of a majority government?

Mr Green—We will probably come onto this again later, but optional preferential voting has a tendency to hurt parties that are divided. If a party has its vote divided between different groupings or competing candidates, it is hurt by optional preferential voting in a way it would not necessarily be hurt in by compulsory preferential voting. The example that is raised is Burdekin in Queensland in 2001, where the Labor Party got 36 per cent of the vote. A National Party candidate, a One Nation candidate and a City Country Alliance candidate, three definitely conservative candidates, got 64 per cent between them, but the Labor Party candidate won because the exhaustion rate between the three competing conservative candidates was massive. They all hated each other's guts and they did not direct preferences to each other. If voters had been forced to make a preference decision and the parties had been forced to direct preferences then they could probably have constructed a majority for one of those conservative candidates, but in that case three competing candidates who would not direct preferences to each other under optional preferential voting lost out to a Labor candidate who had the highest primary vote. It does work in favour of the party with the highest primary vote, but why should you insist on an electoral system which just allows competing candidates to direct preferences to each other?

Senator RYAN—I appreciate the electoral impact of it. I am wondering: from a systemic point of view, would any of you have a concern if there were 40 or 50 members of the House in this place that were elected on figures like that? Do you think that would open up a potential weakness in our system?

Mr Green—No, because the numbers of cases where someone gets elected with a plurality rather than an absolute majority are quite small. If you look at New South Wales and Queensland, the proportion of cases is no more than about 10 or 12 per cent of the electorates in a worst-case scenario.

Mr Brent—I see it as almost a semantic point, especially this idea that in Queensland it has turned into 'first past the post' or something like that. A comparison is with the French, who have two rounds of voting. Early this year or last year Sarkozy defeated Royal 53 to 47. No-one goes back and says, 'Ah, but in the first round so-and-so many people voted.' It is almost

semantic, because in the end you end up with a two-party-preferred vote. That is the two-party-preferred vote of people who gave a toss beyond their first preference. I could also point out that, if you take into account the number of people who vote informal, we already have quite a few members who are elected with less than 50 per cent of the turnout.

Senator RYAN—That is different to 50 per cent of the valid vote, though.

Mr BRUCE SCOTT—Mr Green, I think there is a difference between optional preferential voting as opposed to just voting 1—first past the post. You might comment on the recent Queensland election. I think people were returning to exercising at least some partial preference because there were situations where, in some seats, those who got a majority of the primary vote—particularly in the Treasurer's seat of Mount Coot-Tha—

Mr Green—What has happened in Queensland in recent years is that you have seen a return to the majority two-party system. It is basically two parties again. What you were seeing in 2001 was the conservative vote heavily divided, and therefore that side of politics was harmed by optional preferential voting. If you are concerned about the plurality of the system, the point I would make is that if party votes are heavily split and you are moving away from a system with two dominant parties then you are getting a system where the primary votes are heavily divided amongst multiple parties. Never assume that compulsory preferential voting will produce a sensible result out of that. Look at the 1998 Queensland election, when Pauline Hanson emerged from nowhere. If that election had been conducted under compulsory preferential voting, I do not think you would have got any more sensible a result than was produced. If you have a primary vote heavily divided between multiple parties then the result is determined by whoever finishes second and third, because who gets distributed—

CHAIR—But what happened with her? She was kept on the roll after she was booted out of the Liberal Party.

Mr Green—This was the 1998 Queensland state election.

CHAIR—The state election, sorry. I mixed it up with the federal one.

Mr Green—That election was basically decided because there was again a heavily divided conservative vote. The Labor Party essentially got close to a majority by having the highest primary vote. If there had been compulsory preferences Labor probably would not have got its majority at that election, but I do not think you would have got a more sensible outcome in terms of government. You would have had competing parties that disagreed with each other somehow conjuring a majority.

Mr SULLIVAN—I can talk to you about both of those Queensland state elections.

Mr Green—Yes, you lost a seat in the first one!

Mr SULLIVAN—In the first of them, in 1998, I lost my seat to One Nation because the National Party preferences went heavily to One Nation, and they exhausted in very small numbers. In the 2001 election my wife won a seat in what was declared to be a Peter Beattie landslide. Sixteen or 17—I cannot remember the exact number—of the seats that were won by

the Labor government in that election were won with a final vote for the winning candidate of less than 50 per cent of the valid vote cast.

Mr Green—Yes, but that comes about because there is a greater division of the parties and more of these preferences are distributed. The 'just vote 1' matters when the major parties are having their votes distributed.

Mr SULLIVAN—'Just vote 1' posters go out in every state election in Queensland and they very heavily seek to influence the nondistribution of preferences—in other words, to turn it into plurality—and I am not sure that I agree with the figures that have been quoted.

CHAIR—What is your second question?

Mr SULLIVAN—My second question goes to Mr Brent. Do you not agree that OPV turns into a plurality because of the deal that the practitioners run? I do it myself unashamedly in Queensland elections. You seek to have other parties' voters not distribute a preference. You talked about the French run-off election system. The Australian ballot, as it is called overseas, was, as I understand it, specifically designed to prevent the need to get people out for a run-out ballot. In modern Australia getting somebody out a second time in a fortnight would be a fairly hopeless case.

CHAIR—What is your question?

Mr SULLIVAN—My question is: does he not agree that OPV becomes a plurality?

Mr Brent—It is up to the elector. The reason first past the post is such a terrible system is that, if the elector has two candidates that they quite like, they must choose one and not vote for the other. Under OPV of course they can vote 1 for one and vote 2 for their other favoured candidate. It is true that electors tend to do what the parties tell them—that is a flaw—so that is why you do have a point. There is not much we can do about that, I suppose.

Mr Musidlak—There is. If voters understand and are encouraged to understand how the preferential system works then they will make their decisions and express them in a way that they do not regret. That really ought to be one of the underlying principles that we work to with the electoral system, and then the parties can try and persuade the voters. In most elections over half of the seats are won on first preferences or it is very close to that already. You do not get too many opportunities for low proportions translating into seats being won. It is only about one per cent of the Labor vote where the second preference gets looked at, other than for formality checking. The coalition is slightly higher, but not much. Why are we throwing those votes away when all of those voters would have a say in the final two-person comparison, in single member elections, and also in the Senate? 'Why are we throwing away these votes unnecessarily?' becomes a very important question of principle.

Mr Green—You can point to cases where the engineering of exhausted preferences change the result. The Labor Party, by campaigning to try and increase the number of National voters or One Nation voters who did not direct preferences, actually assisted the Labor Party. Under compulsory preferential voting I can point to instances where parties that finished second or third deliberately engineered outcomes by directing their preferences. In the early eighties in

Warrnambool, which is a state seat in Victoria, the Labor Party, having failed to get a certain deal out of the National Party in a by-election, chose to direct its preferences to the Liberals, and the Liberals won the seat at the by-election because Labor directed to the Liberal. There were only three candidates and Labor finished third.

At the subsequent state election in the same seat, the candidates finished in the same order: the Liberal Party vote went up nearly 10 per cent, the National Party vote declined and the Labor Party vote declined. But this time the Labor Party directed preferences to the Nationals; 90 per cent of preferences flowed that way and the National won the seat. That was a result entirely engineered by the decision of the third-running candidate, not by any reference to the first preferences. For any case you can show up under optional preference voting, you can find examples under compulsory.

Mr BRUCE SCOTT—We have got optional preferential voting in some states and not in others, and we do not federally, so is there a case for harmonisation—if it could be achieved?

Mr Green—There is a case for harmonisation, it is not—

Mr BRUCE SCOTT—Because of the confusion, which I think leads to a fairly high informal vote?

Mr Green—The informal vote is higher in New South Wales and Queensland, but some of the informal vote is caused by also having a Senate ballot paper where you only vote one, and we know that causes an increase in informal voting as well.

CHAIR—I will bring Ms Bailey in on this topic. Did you want to say anything?

Ms Bailey—PIAC does not have a position necessarily on preferential voting. The basis of our submission is transparency and consistency. Whichever decision is made—getting back to the point that was just made about harmonisation—to avoid confusion for voters, to have some consistency between federal and state electoral systems would be our point on that issue.

CHAIR—Andrew, do you have anything you want to contribute at this stage?

Mr Murray—Yes. I think the Australian preference system is an outstanding advancement on the awful first-past-the-post system. I think it is so widely accepted, that almost we do not need to talk about first-past-the-post. Then, the question is full preferential or optional preferential, and I am a supporter of full preferential voting. The question in my mind is whether, because of the informality issue which is produced by the varying systems aspect and federal levels, it is more important to have a common preferential voting system agreed at COAG than—

CHAIR—What was that?

Mr Murray—Whether it is full preferential or optional preferential—that is a question I would put to you. Is a standard system harmonised more important than whether it is full or optional?

CHAIR—I will put my two bob's worth in here: I am a fan of compulsory voting, because that maximises the participation in elections. I am a fan of full preferential voting because that maximises the participation at the end of a process in terms of determining a result—

Mr Murray—I agree with that.

CHAIR—and in terms of overcoming informality, I am a fan of a safety net system, which used to be there before it was recently taken out in the House of Representatives, and which is still there in section 270 of the Electoral Act for the Senate, if you are voting for nine or more. But it is only about maximising the votes that count at the end of a process. Whether you manipulate how your vote goes does not, to me, lead to an undermining of the system. Whether parties choose to manipulate preferences or whatever, so be it.

Mr Murray—I think the manipulation in the lower house is overstated, simply because it is transparent, public and open—you can clearly see what the parties are doing—and therefore the voter is at liberty to decide to accept or not accept the guidance of the party. So I am not remotely concerned about the way in which parties decide in their own interests what to do in the lower house. I am extremely concerned about the upper house, because lodged tickets are not open, transparent and understood by voters, and you therefore have a flow of preferences which is effectively hidden from the voter, who puts '1' above the line. That is why I am attracted to a horizontal preferencing above the line system.

Senator BIRMINGHAM—You have picked up where I was going to go, Andrew, on that notion of manipulation. We have heard already that there is a high proportion of voters who follow party instructions when it comes to how they vote. Surely, in the end, whether we have a compulsory voting system—or particularly if we were to make a transition to an optional voting system—there would be a way in which you could ban or phase out the use of how-to-vote cards or messages like 'just vote 1' South Australia has a unique set of circumstances on banning a 'just vote 1' message despite having a safety mechanism of a type the chair has spoken of. Especially if we were to consider introducing an OPV change, wouldn't there be some benefit in essentially freeing voters to make their preference choice entirely of their own accord, notwithstanding your statement that, in the end, if they have to make their own decision you will then get a fair balance between those who choose to preference out of will and those who choose to preference or not preference according to what they think their party's choice wants them to do.

Mr Green—The example I would raise is the Bradfield by-election. There are 22 candidates. Probably 70 to 80 per cent of the voters in that electorate, or 50,000 to 60,000 voters, will vote 1 for the Liberal candidate or the Greens candidate. The other 21 preferences on that ballot paper are just a transcription test to make their vote informal because their preferences will not count. All those voters will have to fill in a ballot paper to choose between nine different Christian Democrats candidates. They will not know who the candidates are so they are going to resort to copying the how-to-vote card or randomly filling in the numbers.

CHAIR—If they unintentionally make a mistake, it will not count. Why shouldn't there be a safety net?

Mr Green—There may be a safety net, but you are still forcing people to make a choice between all those candidates. If they really have no idea who those candidates are then how do they make a judgment on preferences?

Mr Murray—I think what we should do is look at the usual rather than the unusual. I agree entirely with respect to those large candidate slates, but the usual House of Representatives seat or state seat has fewer than 10 candidates. But you still get voter ignorance about most of those candidates. One of the things we should do, I think, to lessen the ignorance about who people are and what they stand for is to try and improve the availability of information about candidates. I would suggest a small reform, and that is a standard way across the board, across state, territory and federal elections, of using websites to allow candidates' photographs and 500 word manifestos to be put up on the websites so that the material is more widely available and easily available than it presently is. I do not think that will have a marked effect, but those that things we can do to reduce ignorance will improve voter choice.

Mr Musidlak—You do not necessarily maximise the level of participation at the end by having full preferential voting because if, in marking 22 preferences, you have the two main candidates' supporters having big enough drop-off rates, you can construct voting figures that actually have more people's votes set aside as informal at the start and, at the end, even though the others have been forced to mark all preferences, the totality being involved in the two-person decision is actually smaller.

That brings me to another point. The system currently is vulnerable to fairly wealthy anarchists deciding to put up 100 candidates in a seat. The moment that that happens, you really do have a big problem in an electorate. It will occur to someone at some stage to attempt that or to attempt to put the electoral system into disrepute on such a basis.

CHAIR—I think the Senate in 1974 had 73 candidates, which cost the Labor Party a seat in New South Wales. Twenty of those candidates were nominated by some Independent alderman from Bankstown council.

Prof. Williams—I just wanted to speak on a different point, recognising that this section may close on the question of harmonisation, which was raised initially. I just want to put a couple of ideas on the record. My strong view is that this is an area where efforts need to be made to harmonise the law. I think that there are many differences between the electoral legislation of the different jurisdictions, which frankly go to no end. They are simply different administrative choices and the like, but often they impose costs and they certainly have an impact on things like voting and understanding of the system. But also there are a range of problems which are actually quite damaging because of the differences. There may be differences in voting systems and the like that can have a big impact upon the level of informality.

My view is there should be much greater harmonisation, at least at the core of what we might regard as the electoral program. But, on the other hand, I do not think it should stifle innovation. I think there should certainly be room in the different jurisdictions to trial new things, such as the ACT with its electronic voting trials. But I think that this is an area where there should be a cooperative scheme of some kind. There should be mirror legislation. That is the appropriate vehicle here, not a referral of powers from the states. That would have its own constitutional problems and it is something that a ministerial council or a joint project of the Electoral

Commission should be addressing with a view to producing a core set of principles and provisions that can be inserted into the electoral legislation of all of the jurisdictions to remove some of the current problems of the divergencies between the systems.

Senator BIRMINGHAM—I wanted to bring us to harmonisation at some stage. There are obviously those issues that impact on voters, there are those issues that impact on political parties, and then there are some issues that probably overlap a bit between the two. But from all of you at some point it would probably be good to hear a prioritisation—what you think are the key issues that, if you were to go down a harmonisation path, we really should be looking to tackle.

CHAIR—I think we will keep it in mind and we will have a summary section. I think it is a terrific idea.

Mr SULLIVAN—I think COAG getting together to sort out a harmonised system might be good, because it might allow Queensland to jettison its lock, stock and barrel optional preferential voting. It was adopted because that announcement was made by former Premier Wayne Goss, and it was a recommendation of EAC, not of the political party—folk much like your good selves rather than those who were in there.

Mr Green, the idea that optional preferential voting decreases informality is an interesting one. You mentioned earlier that you attribute some of it to the different voting system in the Senate at federal elections—the vote 1 above-the-line voting in the Senate. Is there statistical evidence over a number of years in the various jurisdictions that you could bring to bear on that?

Mr Green—By far the lowest informal vote is in Queensland at state elections. Queensland has no upper house. New South Wales also has optional preferential voting but it has an upper house and has a much more ethnically mixed population. So Queensland, with people having to focus on only one ballot paper and having a much more English-speaking population, has a much lower informal rate than New South Wales, which has the same optional preferential voting.

Federal elections have much higher informal voting rates in both states. We know from the research on federal informal voting that a lot of that is just for '1' votes. They occur in every state, clearly because of the confusion with the Senate ballot paper, because those votes disappear at by-elections. We do not have the same federal problem at by-elections that we have at general elections, so it is caused partly by the presence of the Senate ballot paper. Every state that uses the above-the-line voting system at the state upper house has a higher informal rate in the lower house than the upper house—except for South Australia, where they have a savings provision which allows them to take the No. 1 votes in the lower house out of the informal procedure. So it has definitely been caused by the interaction with the upper house. The second thing to say is that the No. 1 votes are higher in federal elections in New South Wales and Queensland, and that is clearly another fact to do with the interaction with the state voting system, people walking in and assuming things work that way.

Mr Brent—To go to another side of your question, the AEC does look at informal votes and I think more than half are votes that would have counted under an OPV system. Once you have OPV, then you can count ticks and crosses and you can really—if someone has tried to vote for

someone, then it will count. Further to Senator Birmingham's noting of South Australia's system, they have the safety mechanism whereby candidates and parties put in preference flows, put in tickets, but everyone has to pretend that we do not have this and everyone has to pretend that we have full compulsory preferential voting. As Senator Birmingham suggested, we could add that onto OPV. An ideal situation would be where we had OPV but no-one knew about it, everyone thought it was CPV, and so then we would have the best of both worlds. Maybe you could have the AEC running ads saying, 'To make your vote count, make sure you number every square.'

Mr SULLIVAN—I want to go back to where I was, Mr Green, which was to the Bradfield by-election with 22 candidates. Is there any prospect that the system that is used in the Senate—that is, a registered ticket—could be used in the House of Reps so that you have a deliberative vote along the bottom or a party line vote above the line?

Mr Green—There have been two ways that ticket voting has been introduced for lower house elections. One is the South Australian system, where it is a savings provision for ballot papers with insufficient preferences. About three to four per cent of South Australian votes are saved by that provision in effect of lower house ticket votes. The other method was introduced for a series of by-elections in Western Australia. You are probably not familiar with the Western Australian ballot paper, but instead of splitting the ballot paper for the upper house across the ballot paper with voting above or below the line, in Western Australia it was designed to be in conjunction with ticket voting in the lower house. The ballot papers are split left and right: you vote for parties on the left; you vote for candidates on the right. This was trialled at three by-elections in the lower house. The formal vote went up, but they ran into problems with independents not wanting to direct preferences and therefore they did not have a square on the left and that caused confusion because people voted for them without them giving preferences. I think it annoyed the political parties because they had to talk to every possible Independent on the ballot paper then because suddenly you gave independents and minor parties control over their preferences. Currently they only have control to the extent they hand out enough how-to-vote cards. So you can introduce lower house full preferential ticket voting, but you introduce the same problem into the lower house that you have in the upper house, where every minor party that does no work gets involved in the negotiation of preferences because every major party that wants to win the electorate has an incentive to talk to every other candidate on the ballot paper to get their preferences.

Mr BRUCE SCOTT—Mr Green, on election night when the polls are coming in, often we will hear your voice say, 'Now that seat will be decided on preferences.' It is just too close to call and it will go one way or the other. But the preference that elects that particular candidate really does not have a voice in the parliament, and yet it is that preference that gave someone, whichever side of the political spectrum they are on, a seat in parliament. When we are dealing with this whole subject, shouldn't we be looking at the New Zealand system where that voice might get a voice in parliament through a multi-member electorate system? What I am saying is: the minority voice that gives a political party a seat, and it could also determine government, really does not get a voice in parliament.

Mr Green—I think we will be discussing that in the second session, but that comes down to electoral systems. In Australia, when you have upper and lower houses, do you want proportional representation in both houses, or should you be going for a majority in one house and proportional in the other?

Mr BRUCE SCOTT—Righto, I will come back to that.

Prof. Costar—While I totally agree that preferential voting is to be preferred to first-past-the-post, I do not think we want to get too starry-eyed about the glories of preferential voting. Remember: those majorities that preferential voting produces—that is the whole point of it, it produces absolute majorities and no-one can get elected in the house without that absolute majority—are there because it produces those absolute majorities by manufacturing them. They are partly artificial. All of the evidence shows that people fill out preferences on a ballot paper in order to make that ballot valid. There is a lot of assumption going on about variability of preferential latitude to candidates. For example, how in Bradfield can you separate the nine candidates who are running from the same party, whereas the people of Bradfield are going to have to fill in all of those squares in order to get their first vote counted. That is what they want. That is why I think we do not want to be too overly generous towards preferential voting. I come back always to McMillan in 1972 when the Country Party candidate won that election on 17 per cent of the primary vote in a full preferential system. So it is not foolproof.

Mr Green—Eighty to 90 per cent of the ballot papers filled in in most electorates will never have their preferences examined. So we are maintaining compulsory preferential voting to force the 10 to 20 per cent of people to fill in preferences, but in the process forcing the other 80 to 90 per cent to also express full preferences even though it does not matter whether they have them or not.

Mr Musidlak—And it matters that they could lose their vote if they do not fill all of those squares in.

CHAIR—I suppose no system is perfect, but some are arguable.

Senator RYAN—Mr Costar, I take your point, but I suppose what the system is trying to do is, in the absence of there being a majority, to manufacture the least 'unpreferred' or the most preferred outcome, so maybe the language is an issue here when people talk about preferential majorities. To go back to the point I was trying raise earlier—maybe I should have used that language—I take the point that Antony Green makes that we are forcing people to do this. But is that not an unreasonable thing to do, to try to manufacture or ascertain—I think we could say it could also be ascertaining—people's most preferred or, depending on your electorate, least 'unpreferred' outcome to try to generate a wider bit of consensus rather than apply a 'majoritarian' plurality based system?

Mr Green—When you do ballot paper research, as I have done—I did some research on the tablecloth ballot paper in New South Wales upper house in 1999, and that was optional preferential voting—you can see people trying to fill in more preferences, and at some point on that ticket people went to the top left of the ballot paper and just started to number across. You see that in any lower house selection where there are lots of candidates. You can see people vote for the candidates they know, and then they just start to go straight down the ballot paper. And you can be sure in Bradfield that the major party candidates are going to be distributing how-to-vote cards, which might go straight down the ballot paper just to avoid confusing people when they try to transcribe preferences. So to say that we are forcing people to make those choices, in the end they end up making them either by randomly distributing them or following a how-to-vote card or just numbering straight down the ballot paper.

Senator RYAN—I appreciate that it does lead to the odd result—you mentioned the McMillan one; there are other ones like that—but there are a lot of times where it does successfully produce a preferred outcome. For example, I will use the seat of Melbourne at the last federal election, where it is probably fair to say that there was a broad left majority—it is the seat I live in—in the seat of Melbourne. If I recall correctly, the Greens candidate ended up coming second. That does not often happen, but—

Mr Green—It would not have happened under optional preferential voting.

Senator RYAN—No, but the point being that by forcing people to think about political parties, they might only, you are correct, think, 'I will only number one to four, and then I am going to number six to 10 in the order of the ballot paper'. But doesn't that in itself have some benefit, that we are generating a wider consensus? There are a lot of results where the system does work quite well; there are a few results where it does not work as well.

Mr Brent—I think that points to the absurdity of it, because the Liberal Party, I assume, advocated putting Greens ahead of Labor. That makes no sense whatsoever. People who wanted to see a Liberal government almost ended up electing a Green candidate. That is absurd, isn't it?

Senator RYAN—With respect, as a Liberal I can speak on behalf the Liberal Party, at least in the electorate where I live. That is a judgment that experts can make, but political parties do not force people to hold a ballot paper.

CHAIR—But you were creating buggery, weren't you, making—

Senator RYAN—No, no.

CHAIR—Which the Labor Party has done as well.

Senator RYAN—The point here is that, if you look at the leakage factor of Liberal votes going to Greens against Labor votes going to Greens, you actually see Liberal voters not following a how-to-vote card to a much greater extent. So I am not going to say one way or the other whether it is absurd. The point is that it is not a judgment for the law to make, surely.

Mr Brent—But it is forcing them to number every square. Following the logic of what you are saying, why is it preferable to force them to vote for the Greens ahead of Labor rather than just saying, 'I cannot stand either of them'?

Senator RYAN—My point is that they are not being forced to vote for the Greens ahead of Labor; they are being forced to make a choice between the two.

Mr Green—They are forced to vote for the Greens or Labor to make their Liberal vote count.

Senator RYAN—Yes, that is true.

CHAIR—I suggest that we continue this in the next session. I want to ask Dr Johns if he wants to make a contribution on topic 1. Then we are going to have a short five-minute break

where you can get tea or coffee on my left and then we are going to roll on. Gary, have you got anything you want to say at this stage?

Dr Johns—Yes, thanks. Again, apologies for the time.

CHAIR—That is all right, mate—it is Queensland.

Dr Johns—I would like the preferential system—I think it is the least wasteful system—but I understand that, if you force people to run down a very long ballot paper, it will force errors and, perhaps, peculiar results. So I think the optional preferential system is the best system. I think the only confusion arises among voters where they have an optional preferential vote at the state level—say, in Queensland—and then the compulsory complete preferential system federally. That catches some voters out. Ideally, of course, we would all be running on the same system. There is not a lot you can do about that except to keep the commissioners and politicians talking, but I do prefer the optional preferential system. It has a lot of strengths. That is all I would like to say.

Proceedings suspended from 10.32 am to 10.40 am

CHAIR—The second topic that we are going to talk about is representation and voting systems. Some of the discussion topics included under topic 2, representation and voting systems, include arguments for and against alternative voting systems for, first, the House of Representatives and, second, the Senate. In addition, the green paper discusses the use of the savings clause which applied from 1984 to 1998 for voting for the House of Representatives. I invite participants to give their views. We talked about some of this in the first session. We are going to have a bit of overlapping of sessions—so be it. I will ask Brenda Bailey to open the batting and then I will go to our two friends on the phone, Gary Johns and Andrew Murray.

Ms Bailey—The first of the two issues that PIAC will deal with in our submission for the green paper is the one I have already mentioned, harmonisation—hopefully reducing the amount of informal voting. Along with reducing informal voting we encourage greater education in those areas that the AEC has already identified as being problem areas where there are higher numbers of informal votes.

What may seem to contradict that is that, following a principle of transparency, we would like to see the end to above-the-line voting in the Senate to ensure that every vote is earned by a candidate and that voters are actively choosing that preference. But we understand a degree of education would need to follow this and we understand there would possibly be a higher informal vote initially. At the moment, we see a lack of transparency in voting above the line. Even though voters could make some effort to find out where their preferences are going, essentially most do not know and we see that as a failure in the system. They are the main points we have dealt with.

CHAIR—Until we get Gary Johns and Andrew Murray back on the line, I might call on Antony Green.

Mr Green—I think that some change to the Senate ballot paper method of voting needs to be introduced. The current system was a huge advance in terms of lowering the informal vote in

1984, but unfortunately a knock-on consequence of that is this dealing over preferences where parties who make no particular effort to do any form of campaigning now engage in preference dealing. We have these scrums of candidates turning up to lodge their group tickets and engaging in all sorts of esoteric preference swaps, resulting in candidates getting elected from a very small percentage of the votes who would not get elected under any other electoral system in the world. So I think some form of change to that is necessary. Introducing above-the-line preference voting, as has occurred in the upper house in New South Wales, is one option. Another option is to introduce optional preferential voting below the line as well as, say, retaining ticket voting. In that sense, voters would be given an easier option to vote than the current option, where they have to preference every candidate on the ballot paper. A third option—

CHAIR—When you say 'optional below the line', where would you stop it?

Mr Green—As many preferences as there are candidates seeking election.

CHAIR—Right.

Mr Green—That is the easiest way to do it. There are two other slightly different options. One is to introduce some form of minimum quota for election. I disagree with doing that because it brings another form of distortion into the system. The final option, if you do retain ticket voting, is to actually limit the number of preferences to other parties that a party can lodge on that ticket so that they can, say, only lodge two or three other parties on the ballot paper. That would encourage them to only direct preferences to like-minded parties rather than engage in esoteric deals with parties that have a very low vote. The other thing was that if you set a very low number on that, if they wanted to direct preferences to further parties, it would encourage them to put more preferences above the line on the how-to-vote card. So there are ways to limit it. You can either go down the path of putting all the rights to direct preferences into the hands of the voters or maintain—as an interim measure in particular—some form of limited above-the-line voting by limiting the party's control over those preferences. As for the other options mentioned, I think there does need to be some change to make more of those currently informal lower house ballot papers formal. There are various ways you can do that. We have looked at options around the different states.

CHAIR—Do you have a preferred option or cascading preferred options?

Mr Green—My preferred option would be optional preferential voting. My second option preference would be some form of loosening of the criteria. Currently you have to number—say, in Bradfield—from exactly 1 to 22. You can leave the last square blank if you want but, while, if you want to avoid optional preferential voting, you can still ban the duplication of numbers, there are people who number ballot papers 1, 2, 3, 99 and 100. It is clear what the voter's intent is there but it is actually informal under the federal act. It is formal under the state acts, and I do not see why those sorts of votes should not be allowed.

CHAIR—We had a save in this clause until 1988. Were you happy with that one?

Mr Green—I think that if you were to get on the path of the savings clause that was there, you would start to allow the Langer votes in again, and that would open a different debate about duplication of numbers. Some form of provision there which removes the strict requirement to

say something like that there will be an ordering of preferences and that that will be counted as long as the voter's intent is clear or wording like that would get around the fact that the numbering was out of sequence. One other point I would make is that there is a comment about redistributions. I think there should be some provision which makes it on a more fixed timetable to avoid the situation we have will have in Victoria in the new year, where because of the two-week gap in the strict legislation they have to start a Victorian redistribution even though there is no chance of it being completed before the federal election. I think there should be a look at that sort of process so that we do not get these redistributions occurring at all sorts of odd periods throughout a parliamentary term. Perhaps they should all take place at around the same time at the start of each term.

Mr BRUCE SCOTT—In respect of the redistribution in Victoria, it is not an additional seat; it is just a redistribution of the current boundaries, isn't it?

Mr Green—The act is extremely prescriptive about when you can start a redistribution. It says that you can put it off as long as it is within 12 months of the end of the term of the parliament, but the current term runs out in—

CHAIR—Because it is a seven-year redistribution.

Mr Green—Yes. The current parliament runs out in February, but the boundaries were—

CHAIR—No, the current parliament runs out in February—

Mr Green—In February 2011. But the current boundaries in Victoria were put in place at the end of January 2003, so there is a two-week gap there between when the seven years is up and when the parliament is up, and there is no provision to fiddle that. There are a number of things like that which could be done which would make more sense.

Senator RYAN—That does not have to recommenced at all after the subsequent election. Will it just mean that the redistribution is concluded earlier in the next parliament?

Mr Green—It means that as soon as the writs are issued they will stop all the proceedings and then it will start up again after the election.

Senator RYAN—So they have to start again?

Mr Green—No, they will start the procedure again; they will not start from scratch. I am not sure what the procedure is, but the ridiculous thing is that we could get to the stage where they are publishing in a newspaper proposed new boundaries and then an election is called two weeks later and all that advertising just causes confusion.

CHAIR—If it were a change of entitlement that triggered the redistribution it would be interesting.

Mr Green—But that has to start earlier.

CHAIR—I know that. We are still waiting to get Dr Johns and Mr Murray on the line. We will now go to Mr Brent.

Mr Brent—Just briefly, I agree with just about everyone that there is something very wrong with the ticket system and that it needs to be changed—but exactly what to, I am not so sure. At the very least, having the limited option of preferential voting below the line, whatever you have above the line, makes sense to me. As Mr Green said, the minimum number you have to number is the number of vacancies there are. Maybe you could just do away with above-the-line voting altogether, but one would obviously have to tread very carefully.

CHAIR—Professor Costar?

Prof. Costar—I think much of the problem with above-the-line voting and so-called ticket voting is a perception problem. Let us recall what happened in Senate elections before we had above-the-line voting. People would be given a how-to-vote card, which they would clutch. They would go into the polling place and they would transcribe the how-to-vote card of their choice onto the ballot paper and make mistakes. That is why the Senate informality was at that stage three times that of the House. In a sense, what is the difference between a voter doing that and simply ticking '1' which does it for them? Going back to the old system, it is not true to say that the old system was a golden age where people went through and carefully filled out their Senate ballot paper with no regard for how-to-vote cards whatsoever. That is a myth; they did not do that. We know what the consequence was: higher informality. We know that 'above the line' has solved the Senate informality problem. The question now is: is this too rigid? I think we need to unpack this.

Are the people who are arguing this—not necessarily those in this room, but outside—really arguing that or are they expressing an antiparty feeling? Is that what it is? Is it that they do not like the fact that voters follow their party? Voters have always followed their party and that is not necessarily a bad thing. I think there is nothing theoretically wrong with optional preferential below-the-line voting at all. It is quite admirable but. in changing ballot papers, as we know—and as we saw in the 1984 federal election with what happened in the House, except in Queensland—you can create problems that you do not anticipate. My view on that is that I would set aside arguments about ticket voting that are based on antiparty sentiment, because that is not worth taking into account. If we are going to make a change it has to be very carefully handled and there has to be a fairly long lead time.

Prof. Williams—I do not have a strong view on optional voting, but I do have a strong view that we should have preferential above-the-line voting for the Senate. When you think about the potential to distort the genuine preferences of the voters I think the current system is the worst possible system. It is almost like having an optional system where somebody puts '1' and it automatically allocates your preferences in a way that may not whatsoever reflect your real view. I think a preferential above-the-line system is preferable, at least, as a compromise from where we are at the moment and does not get us into the ground of having to adopt it below the line in circumstances that could, again, raise some of the informality and other problems.

On a couple of other points, I would also put on the table the idea of rotating ballot papers in terms of the positioning on the ballot paper. I would not do it necessarily for a large number rotations but for, at least, a small number of rotations to remove some of the advantages that can

flow from placement on the ballot paper. One issue in the discussion is about non-geographic seats for specific groups of voters. That is not something I support. I think there are real constitutional problems with that. It is not clear that you could have non-geographic seats for any category of voters and probably that is best taken off the table. I would also oppose the idea of penalties or other consequences for elected representatives who resign early. I do not see that as a particular problem within the current system. I think that the system works tolerably well and I would leave that as is.

Prof. Costar—Could I just put one qualification on Professor Williams's suggestion of optional above-the-line voting. It would be fine most of the time, because most of the time we have half-Senate elections. My concern about that is that if you have a double dissolution you then have to fill out 10 squares on the top of the ballot paper, and you will get your informality problems back again, not as badly as before—

Mr Green—With compulsory preferential above-the-line voting.

Prof. Costar—No. If it is optional preferential above the line and you have a full-Senate election you are going to have to fill out 10 squares.

Mr Brent—No, you will just have more candidates below the line.

Mr Green—An optional below the line—

Prof. Costar—No, no. George Williams suggested that you might have optional voting above the line. And many people have suggested this—I am not talking about below the line.

Prof. Williams—But where is the centre?

Prof. Costar—There are 12, sorry.

Mr Green—Where are the 12? That might be a better question.

Prof. Costar—If you have got a full double dissolution and your way of voting—

CHAIR—But above the line is groups, Professor Costar.

Mr Green—There are six or 12 candidates in each group. The way you get around this is by doing what they have done in New South Wales. You force the parties to stand as many candidates is there are vacancies and then any single above the line votes reaches the minimal requirement for optional below the line.

Prof. Costar—But then you will get cries of discrimination from the independents.

Mr Musidlak—We get to very artificial arrangements because we do not start with trying to reflect voters wishes. The Senate is an excellent example. Dr Evatt brought in the changes to proportional representation based on the Irish system. In Ireland they have optional preferential voting. The informal rate continues to be lower than one per cent. Quite a few coalition members of the parliament who had experience of the Hare-Clark system in Tasmania—Dame Enid Lyons

was one of them, although she was not elevated to that title at that stage—pointed out that you do not need to mark all the preferences. But Dr Evatt insisted because he said there were problems with the exhaustion of votes and so on. It was a price the country paid that was unnecessary.

We then went to party boxes. Within party boxes we have the opportunity for parties to submit two or three registered lists. Western Australia has the same constitutional provisions about their members of parliament being elected directly by the people. They do not allow multiple tickets. There are issues of constitutionality. In fact, sections 272(4) and 272(5) of the Commonwealth Electoral Act have strange savings provisions if for some reason various things cannot be done—and the only reason they cannot be done is if these multiple tickets are unconstitutional. So we are building this very elaborate scheme and now we are thinking, 'Let's have above the line optional preferential and let's start forcing parties to nominate at least 12 or six candidates depending on what sort of election it is.' All of these problems are avoidable if we say, 'How about we put voters' views first and set about trying to elect the requisite number of people?' We would avoid building such an artificial scheme and we would avoid all of the problems that come with it.

Senator BIRMINGHAM—I would like to pick up on treatment of independents within a Senate campaign and particularly the impacts of it. I am quite familiar with the situation of Senator Xenophon in South Australia. To run with his own column, under the current act he was forced to have a running mate. We saw what happened in South Australia when he had a running mate—they got elected. South Australia now has two people in the Legislative Council but the people do not really have any idea who they are.

CHAIR—They have a bit more credibility than Senator Fielding, I would have thought.

Senator BIRMINGHAM—You could say the same of party candidates. But there is something particularly unusual about independents, particularly in the way we have seen Senator Xenophon's running mate emerge in the South Australian Legislative Council as someone who does not seem to agree with Senator Xenophon on a lot of matters. The first problem is the requirement that, for him to be able to get an above the line box, he has to have more than one person running with him. But then of course a further requirement is that if you were to eliminate that under our current system then he will be off distributing his preferences—and, if we were to have a double dissolution, I suspect that he would get two quotas. He would either be evenly splitting those quotas under the current provisions so as not to essentially choose anybody, or he would simply elect another party or another independent from another list. Surely, that is the greatest perversity of the system. While the voters of South Australia have a great love for Nick, I think his vote dropped between the state election and the federal election because an element of concern about running mates flowed from the experience of that state election.

Mr Green—It might be worth while if I explain what happened in New South Wales after the 'tablecloth ballot paper' election in 1999, when a member of the Outdoor Recreation Party was elected with just 0.2 per cent of the vote through a complex interaction of preferences from more than 20 front parties. They completely changed the rules in New South Wales. They tightened up the rules on party registration and they introduced deposit fees. There were a number of changes.

But they also changed the electoral system for the upper house, to get rid of the group ticket votes with preferences.

New South Wales has the peculiar situation that much of the rules about the upper house are written into the Constitution, and it requires a referendum to change them. That includes the requirement for a minimum of 15 preferences on the ballot paper. To get around this without having to have a referendum, what they did was abolish the group ticket votes. The ballot paper is exactly the same; there are still boxes above the line. But the rules for the tickets were changed so that there are no longer preferences for other parties on the ballot paper. If you vote '1' for the Liberal-National coalition, the preferences are straight down the ticket and nowhere else. There is complete exhaustion of the group ticket votes beyond that point.

But they did two other things. To meet the minimum requirement of 15 members and to make the group ticket vote work, a party has to do stand enough candidates to ensure the vote is formal under the Constitution. So they forced them all to stand 15 candidates. But they did introduce optional preferential voting above the line, so you can vote '1' for Labor, '2' for Green, or something like that, and your preferences go to all the Labor candidates and all the Greens candidates. That has been used at two elections. I did some research on the 2003 election ballot papers—they gave me access to data files. There were 78.6 per cent of voters who just voted 1 above the line, 19.6 per cent who numbered preferences above the line and 1.8 per cent who voted below the line. The rate of above-the-line preferences varied from party to party. It reached 35 per cent for the Christian Democrats, who were much likely to go '1' Christian Democrat and '2' Liberal. So the more a party distributed how-to-vote cards the more people followed that and gave the party some say over its preferences—but the voters had to fill in their own preferences.

That has worked in New South Wales but the exhaustion rate of the minor parties excluded is massive—80 to 90 per cent—because they do not distribute any how-to-vote material and people do not have anything to follow. That has resulted in the last couple of candidates getting elected with less than a quota. In New South Wales the quota is only4½ per cent of the vote. That has not distorted the proportionality of the system; it is still more proportional than the previous group ticket voting system. But when you are electing a Senate, with only six vacancies, if you have a higher exhaustion rate under that system then you will have a problem of potentially distorting the system. If you get a case like the Senate in 2001 in New South Wales, where One Nation, the Democrats and the Greens got about four per cent of the vote each, if there is a high rate of exhausted votes there would be the potential for one of them to get elected with a very low proportion of the vote. So if you are introducing some sort of above-the-line ticket voting, as has been suggested, where people can number their own preferences and it is fully optional, to avoid going back to the old informal vote system it may be that, especially as an interim measure, you would have to maintain some form of group-ticket voting where parties give preferences. But, as I have suggested, you would have to limit who they can give preferences to; otherwise, you might get a high rate of exhausted votes, which may distort the system.

Mr SULLIVAN—There is something that Professor Williams mentioned that I do not want to let pass without a bit more discussion, and that is the opposition to non-geographic seats. I am very attracted to the adoption in Australia of the New Zealand Maori seat system. It would give Indigenous Australians however many seats at the main table in the parliament. It would also require the major political parties who want to win those seats to have very good, comprehensive Indigenous policies in order to attract candidates and to try and fight off the idea of 'A pox on

both your houses; we'll have our own party.' I would like to hear from you a bit more as to why you would be opposed to that sort of a system.

Prof. Williams—Certainly, I do not think it can be done under the Constitution just as a threshold issue. That is because the Constitution sets up the House of Representatives on a geographical basis in essentially dividing the population amongst the states and then requiring a division of seats within those states. It is certainly inconsistent with the structure that the Constitution establishes for how the House of Representatives should work. It is possible some very tricky way might be thought of for getting around that, but I cannot see how that can be done. It has not been decided by the High Court. At the moment I have not seen any proposal put up that I think would survive constitutional challenge. That is really the main impediment.

On the policy ground, I think it is partly that I have not seen a strong call from the groups themselves, particularly Indigenous groups, demanding such a change. Perhaps I would reconsider the issue on a policy basis if they themselves thought that was an appropriate way forward. At the moment it just seems like an issue where there is some merit to discussing it but it is not something that is really put strongly on the agenda. For me, it is a bit like lowering the voting age to 16. I can see there are some arguments back and forth, but if the group affected themselves is not strongly mounting a case for that it is not something in my view that really has the legs to be taken further.

Mr Brent—I am against it. It would create resentment, I believe. They would probably end up as a subsidiary of the ALP. It is so unlikely to happen. It still has support in New Zealand. They have had it for 130 years or so. It is really a remnant from another era. A move to PR, proportional representation, would be a better way to address that and more likely to happen. You can imagine, if someone tried to do it, the arguments that would be raging across the airwaves. It is just not going to happen anyway. I think it is inherently a bad idea too.

CHAIR—We will now go to Gary Johns, then Andrew Murray.

Dr Johns—There are a couple of topics here that you seem to be canvassing.

CHAIR—You can comment on all of them, Gary.

Dr Johns—All right. I just do not think it is wise to have dedicated electorates for Indigenous voters. Most Indigenous people live in the major cities and the intermarriage rate is 70 per cent in those places. It is very hard to distinguish Indigenous interests from non-Indigenous. Where it is more obvious, in the northern parts and especially in the Northern Territory, there are Indigenous members in the state and Territory legislature, Labor and CLP. People seem to have found a voice under the current system, at least at Territory level. I think it is most unlikely ever at a federal level. That is even if we get past the threshold questions that George raises.

By the sounds of it you have been canvassing the question of a threshold requirement for the Senate for someone to get elected. It just smells a bit. I guess my view is simply that the major parties have a firm grip on the lower house and that is a good thing in terms of stability. Our system is built around that. My preference always in the upper house is to let whoever have a clear run. I know it can lead to some peculiarities, but nevertheless I think that makes

governments who have a pretty easy run in the lower house have to work for their money in the upper house. So I would leave any thresholds well alone or make them absolutely minimal.

The question of optional preferential or below the line Senate voting I thought was a sensible suggestion only because I think optional preferential is a sensible way to go. You can lead people to water; you cannot make them drink. There is the notion there that at least people have the option to run down along the ballot paper, but you do not force them to do it—those few who bother to vote under the line. That is all. Thank you.

Mr Murray—I will deal with the dedicated electorates issue first. Most people at this hearing probably do not know my history. I was many years in Africa and I was an active campaigner for universal equal suffrage and against racism. Because of that I ended up being deported from South Africa. I can tell you that I am utterly and completely opposed to any race based constituency. I think it is contrary to every democratic concept. So from my personal perspective I could not support it.

Turning to the Senate issue, I think you would be very unwise to go anywhere near a threshold. What I liked about the green paper was that it was trying to address things from a principal space. The principles we should search for with the Senate or any upper house is that it is a fair, competitive and open system. We have to ask: in which respects is the Senate process presently not fair, open and competitive? Just speaking as a Western Australian, it is extremely difficult to get elected here as a minor party. I was once told that, so far, I am the only senator in 60 years to be elected in WA twice consecutively at a half Senate election—otherwise, it is always major parties that experience that particular joy. I do not think we should be guided by who we like and dislike in these matters. Those independents who succeed tend to be astonishingly popular—Harradine and Xenophon being the examples. I think Senator Fielding is a fluke. It is unlikely to occur again, from my perspective. The real issue is: if the voters have decided how they want to vote, they do not want to vote below the line—very few do. You could leave that option open for them. I have no problems with it shifting to a system which is not fully preferential, below the line, because there are so few voters and they are able to make their own decisions. The issue is above the line.

The whole notion of lodged tickets, I think, is disreputable because it is deceptive. It is deceptive in the sense that voters cannot and do not know how their preferences will flow and where they will go. The fact for senators, regardless of how attractive some of us who are senators or have been senators might think we are, is that the vote is most of all on a party line. My view is that, on that basis, since most people want to vote above the line, since they want to vote for parties and since the vote should be open, we would be best off with a horizontal, above the line preference voting system. I would begin with a full preference system and just see how that goes over time, above the line, with a decent savings provision. I think Antony Green's remarks are very helpful in that regard.

Mr Musidlak—The issue of above the line and having optional marking of preferences is going to run the risk of entrenching another behaviour in Australian politics—that is, the major parties handicapping their supporters at Senate elections and then some of their number coming out and saying: 'Therefore we should have thresholds built in.' A much better solution would be to introduce Robson rotation of names on the ballot papers so that major party supporters are no

longer artificially handicapped and so that people like Glenn Druery cannot go around trying to cobble together a quota of support, starting with a very low number of votes.

In Tasmania and the ACT, with the Hare-Clark system, and if you look at Ireland and Malta, you do not get elected unless you have a reasonable base level of support. The rule of thumb is, if you do not get half a quota, you are not going to have much of a chance. But what currently happens under Senate elections is that your quota is 14.3 per cent; a major party in a bad year might only get 35 per cent of the vote—it is used up as 14.3 and 14.3 again to elect two, and that is 28.6, which means six per cent is left for the third person, which leaves that candidate a lot more vulnerable than need be. With Hare-Clark arrangements, or Robson rotation, that 35 per cent is more likely to be broken up as 10 per cent, 11 per cent, 14 per cent or something like that, and that immediately means that, for anyone else who wants to be elected, they will have to get above 10 per cent as a grouping plus further preferences. I throw that in because, if you are going to respect voters' wishes, that is a far more straightforward way of achieving fair representation without unintended consequences and without entrenching things into the system that will just cause problems.

CHAIR—I will come to that in a minute, but first I will go to Senator Birmingham.

Senator BIRMINGHAM—Thank you, Chair. I just observe in response to Mr Musidlak's comments that, as Mr Murray rightly pointed out before, no matter how great we senators think we are, most voters prefer to vote for the party when it comes to the upper house. The system to which you refer does not prevent them from voting for a party but it does, in a sense, complicate that arrangement compared with the ease of the above-the-line arrangements that exist at present.

I want to touch on two aspects of what Andrew was saying, and they flow a little bit from the evidence Antony gave before. The first one is the voters making their choice , and their choice overwhelmingly has been shown in federal elections to vote above the line. Antony indicated that in—is it now two?—New South Wales elections the revised system has been in place, and we have 19.6 per cent of people choosing to follow their own preference course above the line.

Mr Green—That was in 2003. The system was relatively unknown. The preferences are relatively unimportant in New South Wales. It would be in the interests of parties in a Senate election, with only six members to elect, to try to get more of their voters to distribute preferences. So that may be an issue, and the ballot papers in New South Wales, even though they are not tablecloth size, are still substantial ballot papers with hundreds of names.

Senator BIRMINGHAM—But 19.6 is a fairly decent cohort on the first outing, in particular.

Mr Green—It was not advertised. Most people did not know the system was there, that you could number that way. In the same way, from the federal election we do not have any figures from the AEC about the number of people who put more than one number above the square—and there are people who do that, but those preferences do not count.

Senator BIRMINGHAM—Do you have any idea in terms of the 2007 New South Wales election?

Mr Green—I think it may have risen higher. The difficulty in 2007 in New South Wales was that the major parties and the larger of the minor parties never had their preferences distributed. They were the ones that were residually there at the end of the count when all the preferences were done. The parties that were excluded were all under 1½ per cent and they had huge exhausted rates. But if they got less than 1½ per cent the problem was they probably were not handing out how-to-vote cards and they had no presence anyway. We do not know—I did not do the research on the ballot papers the second time—what level of material is there. It may be a question that is worth chasing up with the New South Wales Electoral Commission, which may be able to provide that sort of data.

On the comparison with federally, the key thing is that because you get a high exhausted rate, maybe that system is not entirely applicable federally. This is why I was saying that if you introduce some form of above-the-line preferential voting, if you make it compulsory you will have to have a savings provision for people who do not do that, otherwise you will have a huge informal vote. But, if you do that, my suggestion is that parties can still lodge group tickets but they will not be allowed to direct preferences to every party, so there will be an exhaustion at the end of their ticket. If you limit their preferences, it will force the parties to direct preferences to parties they agree with, rather than engage in strange deals, and it will prevent people like Glen Drury and Co. doing cobbled-together preference tickets with multiple minor parties.

CHAIR—What is the policy substantiation for something like that—to force people to fall short in terms of their preferences?

Mr Green—Parties. Because if you will not adopt optional preferential voting and you are going to have compulsory preferential voting above the line, then you are going to have a high informal rate, so you have to have a savings provision which will have to come back—

CHAIR—The savings provision I am not worried about. It is the latter part of your comment.

Mr Green—But is the savings provision going to be the current default system? And if it is the current default system, then the parties are all going to issue 'just vote 1' how-to-vote cards.

CHAIR—Professor Costar, you are champing at the bit.

Prof. Costar—I am remaining unconvinced of these arguments against above-the-line as it currently stands. Former Senator Murray said it was deceptive. I do not think it is deceptive at all. If people want to go and look up what the preference allocations are, they can look them up. It is not a secret.

Mr Green—I completely disagree.

Prof. Costar—They can find out. Senator Fielding did not get elected because of above-the-line voting. Senator Fielding got elected because of the nature of STVPR. Senator Fielding would have got elected under the old system. Senator Fielding will get elected again if the Liberal Party preference him. The solutions that are coming to solve this alleged problem of above-the-line voting are just becoming more and more arcane and more and more complicated. I do not think the problem is big enough to require all these alleged solutions. Let's face it, people are talking about the wishes of voters. The minute you gave people the opportunity to

vote the way the vast majority of them vote—that is, for a party, or it may be a candidate of their choice—and not be forced to fill out useless preferences, 94 per cent of them took the option. Are you seriously going to take away from people, and think that this is going to have no repercussions, a right—that is, not to vote informal and to have their vote entered into the count—to solve some arcane problem a lot of which, although not around this table, is motivated by antiparty sentiment? Can I suggest caution.

Mr Green—With great respect, Brian, I disagree with you on several points there. First, people could have gone and looked up those tickets but they would not have had a clue about what they mean. If you looked at the DLP ticket at the 2004 Senate election in Victoria, its preferences went to Senator McGauran. Anybody who knew anything about how the voting system works knew those preferences were never going to Senator McGauran because he would have already been elected by the time they were distributed. So you can follow those tickets. Unless you knew the system and how it works, you could not possibly have understood that. And secondly—

Prof. Costar—Practically no one knows. No-one can predict. If we discussed this at an electoral matters committee in Victoria, because of STVPR people can say a vote for the DLP—

CHAIR—Can you say what STVPR is?

Prof. Costar—Sorry. It is single transferable vote proportional representation. You could make a statement that a vote for the Communist Party is a vote for the DLP and you could be right. No-one knows. No-one can know that. Not even the most expert person can know that because of the churning and cascading of preferences that is a feature of STVPR.

Mr Green—But where you are wrong is that in that case in Victoria—and I disagree with you about the antiparty thing—this comes down to the fact that under the system that is used with group ticket voting, Senator Fielding would not have been elected. Yes, he got Labor Party preferences at the end and yes, under the old system he would probably have got most of those preferences, but my argument is that he would not have been in a position to get the preferences under the old system because he would not have got the Democrat preferences and he would not have got the DLP preferences. All those other minor parties whose votes cascaded to put Senator Fielding in the position where he could get major party preferences would never have flowed under the old system. That is because the parties that delivered those preferences could not have done if they had to distribute how-to-vote cards because nobody would have got their how-to-vote card. Those—

CHAIR—So who would have got the vote in the end then? Who would have got the position?

Mr Green—They would have sprayed all over the ballot paper.

CHAIR—Is that better than what happened? That is what I am interested in. Everyone has a picture of what happened—

Mr Green—Yes, I do think it is better than what happened because—

CHAIR—I know he got 55,000 primary votes and he got 220,000 preferences from the Labor Party and he has frustrated our mandate ever since, but let us put that to one side. How is it worse than what you have just proposed?

Mr Green—If it was under the old system, the Greens would have won that last spot because it had by far the highest vote and they would have got Labor preferences.

CHAIR—How artificial was that?

Mr Green—That is not artificial. They got votes. Senator Fielding got 1.8 per cent of the vote. How did that get turned into a majority?

Prof. Costar—STVPR.

Mr Green—No, it was produced by controlled preferences.

Senator RYAN—It was not a majority, and I think that is the important point.

CHAIR—He got less than a quota.

Mr Green—Sorry, he got a quota. It was converted into a quota by preferences. Everyone is focused on the Labor Party preferences being responsible for that.

Mr Musidlak—It was the other small—

CHAIR—Very quickly, Mr Musidlak.

Mr Musidlak—There are two points here. Both Labor and the Democrats thought that they were likely to get Family First preferences because they would outlast the then Mr Fielding in the count. That turned out not to be true.

CHAIR—Correct.

Mr Musidlak—So he won.

CHAIR—Whereas we got the third Senate spot in New South Wales on the back of liberals for forests preferences.

Mr Musidlak—In the same election in Tasmania, the same miscalculation was made by Labor and the Democrats. However, in Tasmania a lot of Labor voters voted below the line—20 per cent. That was sufficient for that result not to be repeated and, in fact, a Green won. What we are getting into here is the fact that party strategists can miscalculate—and some of the best examples of this have happened in Western Australian state elections. For example, One Nation magnanimously handed the balance of power to the Greens in one parliament by assisting them to get elected instead of Liberals. Voters are not aware of these strategic calculations, and they only find out after the event.

CHAIR—That is the beauty of these results for aficionados. It is the electors' revenge!

Mr Musidlak—And they are all avoidable if you have Robson rotation.

CHAIR—I am not going to cut you off because I do want to come back to that, but on Robson rotation: what does it mean for how-to-votes and what does it mean for informality in terms of the Senate? I would not mind getting that on the record from either Mr Green, Professor Costar, Mr Brent or you.

Mr Musidlak—We have Robson rotation in the ACT in the Hare-Clark system.

CHAIR—I just want it on the record.

Senator BIRMINGHAM—But in general you have a lot fewer candidates.

Mr Musidlak—Well, we might have 50, and one preference is actually accepted. The ballot paper says: 'Mark at least as many preferences as there are candidates to be elected, and you may continue to mark preferences.' But a unanimous decision was made by the first ACT assembly that—

CHAIR—I just want to know what that means for how-to-votes, and what it means for informality. Can you just put that on the record for us, because you have the knowledge.

Mr Musidlak—On how-to-votes, parties can hand out something saying, 'Mark all of the squares in our column, and then continue as you wish,' or 'then continue to some other column,' et cetera. What it means in practice, though, is that, for parties getting more than a quota, they split that up in the best possible way to maximise the representation that they can get for that level of support.

CHAIR—And what does it mean for the informal vote?

Mr Musidlak—It need not mean anything in particular. It depends on what your informality provisions are. You can get very low informal votes with Robson rotation.

Senator RYAN—How does Robson rotation work with above-the-line Senate voting? If we still have the situation where—

Mr Musidlak—No. Robson rotation—

Senator RYAN—It doesn't, does it? It is either/or, isn't it?

Mr Musidlak—It is an exclusive alternative, yes.

Senator RYAN—I thought so. I just wanted to clarify that.

CHAIR—We will hear from Mr Green and then we will close this session and we will move on.

Mr Green—Robson rotation is something you implement in a system like the Hare-Clark system, where you have a very small electorate, and it is very good for personal voting. The problem with it for the Senate is that most people are not aware, except in Tasmania, of who the Senate candidates are. The Senate campaign passes with little knowledge of who the candidates are, and, apart from Tasmania and Western Australia, there is very little evidence that people are voting on knowledge of the Senate candidates—maybe a bit in Queensland with the National Party.

The problem with the proposal as it is put up—and I have been through the Proportional Representation Society's PR system proposals for the New South Wales lower house—is that Robson rotation was a way of randomising the donkey vote in Tasmania. It was also a way of making it harder for parties to issue how-to-vote cards and determine the order candidates got elected. So, essentially, as implemented in Tasmania, it was a way of stopping parties from determining the order of their candidates getting elected. It minimised the how-to-vote cards. The ban on how-to-vote cards in Tasmania came after Robson rotation.

But where I disagree with my friend here is: the proposal he puts forward, in terms of distributing the quota using Robson rotation to distribute the votes for a group across all the candidates, only works and helps the major parties if they stand the right number of candidates. If you have 3.6 quotas and you stand three candidates, you get 1.2 quotas for each. If you stand four, you get 0.9. If you stood six candidates you would only get 0.6 of a quota for each of them. So where it falls down, using Robson rotation—

Mr Musidlak—As one goes out, the others go up, and so the threshold is lifted for everyone else.

Mr Green—But if you have optional preferential voting as well, then the party will lose its votes in that process.

Mr Musidlak—Very few.

CHAIR—That is okay. Mr Sullivan wants to ask a question.

Mr SULLIVAN—I did want to ask a question I suppose, but I really want to underline something that Professor Costar said, and that is that when voters were given the easier option 94 per cent of them took it. That suggests either that 94 per cent of our voters care deeply enough for their party of choice, or do not care at all and are looking for the easy way out. I think we have talked even here today about educating voters more. Quite frankly, they do not want it. I mean, their voting system is probably as important to them as the electrical wiring of their house. How many of them know anything about the electrical wiring of their house? A select group of people—including everybody in this room—is really interested in politics and the process of it, and the people out there really do not care.

Prof. Costar—Can I make a personal explanation?

CHAIR—You can. Do you claim to be maligned, do you?

Prof. Costar—No, I might have maligned myself. I have never voted above the line in my life.

Mr SULLIVAN—I did not suggest you had.

Prof. Costar—No, I am just saying that, while I am a great supporter of it, I have never done it in my life.

Senator RYAN—Professor Costar, I agree with you when you say that you think this is a problem that experts, aficionados and followers of voting systems, as some of us are, are making bigger than it is. I have to admit that I also have some substantial hesitation in discussing this in the context of a specific colleague of mine, on the basis that an election result is an election result and I do not necessarily think we should be reflecting with laws upon an individual. That is a path down which electoral systems do not end well, and I would encourage people personally not to do that.

But I actually agree with Antony Green here, Professor Costar. I follow Senate how-to-vote tickets. They are very difficult, at best, to understand. But it is something intrinsic in a single transferable vote PR system that you do have uncertainty because the cascading and transfer of preferences will always depend upon the number of votes you get. In 2004 in Victoria, results were different than what one party expected because they got about 0.2 of a Senate quota—I think it was—less than they had expected, and the result would have been very different in that case. So I probably should thank Antony Green as a third Senate candidate for his calculator. I do not know if you know how many people looked at it, but a lot of people have looked at that and seen that as an explanation. How big is this problem? People here are only throwing up one example. It is an example that we do not see that many of. Are we losing sight of the forest for the trees here?

Prof. Costar—Yes, we have only seen two—the current one and the example of Senator Wood, for the Nuclear Disarmament Party, in the eighties. Remember, he was ruled ineligible because he was a British subject.

Mr Green—I would throw up Senator Xenophon's first elections in the South Australian upper house. I would throw up the case of the One Nation preference mistake in Western Australia in 2001, when they elected two Greens instead of two Liberals. I would toss in numerous cases—

Senator RYAN—But federally, in the Senate?

Mr Green—The quota is higher federally than for any other parliament but the problem is the same. If you had a double dissolution, you would have the same problem in every state.

Senator RYAN—But what I am trying to get at is: what is the problem?

Mr Green—The problem is that parties are encouraged to do deals on preferences which engineer a final outcome and the preferences determine the outcome, not the voters.

CHAIR—And occasionally parties get it badly wrong.

Mr Green—That is right. And the power to get it wrong is enormous.

Senator RYAN—But that is assuming a political party getting something wrong is—

Mr Green—But it is not for the parties to engineer the result; it is for the voters to express their will.

Senator RYAN—So what you are saying is—I take the point now—that voters' preferences are not being reflected. But, if I go to the 2004 Senate example in Victoria, it seems to me that—because one party, the Greens, got a higher number of primary votes than the person who eventually took the last Senate spot, being Senator Fielding—the aim of the system, legally, is to say that the person who gets 14.3 per cent of the vote gets elected. That is what happened, isn't it?

Mr Murray—I would just like to say that I agree with Antony Green absolutely. If you deal with the issue of lodged tickets, you then do not even have to worry about thresholds. I am always uncomfortable with thresholds, and I think the issue is the deception in lodged tickets.

Mr Brent—We can leave aside the results and finding evidence for it being faulty. The fact is that electors are given the incentive. It is so much easier to vote above the line than fill out all those squares. They are given the incentive to do that, and then often their votes will end up at places that they would be absolutely horrified that they ended up.

Senator RYAN—Do you think Mr Green's proposal would address that—if there were a limitation on the number of places that a group ticket could go?

Prof. Costar—You have provoked me now. The reason that that happens, as Peter points out, and he is quite right, is that STVPR is non-monotonic. It is not just this STVPR system either; it is internationally recognised in the literature—in case you were going to provoke me again—that STVPR can produce a situation where your vote elects someone who you would be outraged to know your vote went to. That is the system. There is no perfect system. As a colleague of mine always points out, any electoral system you choose can throw up quirky results. That is not necessarily a reason to anticipate and correct the few quirky results that might come forward if that involves complicating the system and/or increasing the informal vote.

Senator BIRMINGHAM—But what we are discussing here is how best to empower voters and ensure that their will is carried through. Obviously they currently have just two choices. Some would argue that giving them more choices would complicate the system. I understand that argument well and truly, but the two choices at present are two extremes. We are discussing whether there could be a less extreme third choice that gives them the empowerment of the below-the-line vote without the hassle.

Prof. Costar—And the way to do that, obviously, is to have it OPV below the line. Then they have two genuine options, don't they? They have an option to go their own way without too much risk of casting an informal vote or to go the current way.

Mr Green—The problem with the current system is that STVPR does these peculiar things, but only ticket voting delivers 95 per cent of preferences along the ticket. What is occurring with

some of the parties getting elected from very low quotas in the states is a stacking of quotas produced by the ticket voting—they stack to a point where they can start to get one of the larger parties' preferences. None of those minor parties, tiny parties—microparties, as we call them in New South Wales—would be able to stack their preferences together and get to the point where they could get the larger parties' preferences. In a sense, the current ticket system was introduced so the larger parties could control which of the minor parties got elected. But over the last 25 years it is the very smallest parties who have made the most use of this system, by swapping preferences. So a system which was introduced to try and fill that final vacancy between the larger parties is now being utilised by a lot of other parties—that were not in the system once upon a time—to engage in esoteric swaps amongst themselves in the hope that they might get far enough ahead to get randomly elected at the end of the process. I did the research on the giant tablecloth ballot paper in New South Wales—

CHAIR—So the tail is wagging the dog.

Mr Green—The tail is wagging the dog. If you limit the preferences in that way, it stops them engaging in that sort of deal and means that you are not getting these engineered results from very tiny votes.

CHAIR—Mr Morrison wants to make a quick statement and then we are going to move on.

Mr MORRISON—Apologies to the members of the roundtable and the committee for having to go in and out today. On optional preferential voting, as some will know, I have had a fairly consistent view about this along the way. I want to pick up something that Senator Birmingham said about simplicity. The concern I have around the types of things that were outlined in the committee's report earlier this year, which had vote saving provisions in it, is that it basically enshrines a moral hazard into the process. If our goal is for people to have their votes used and to ensure it is as simple as possible then I think optional preferential voting makes a case all on its own. When we then talk about having vote saving measures for the House of Representatives, with the moral hazard that is attached to that, and then have a separate discussion about what to do in the Senate—optional preferential, or just above the line, or just below the line and so on—I caution against the incredible complexity of such an approach. If we want to ensure a more simple system then, in my personal view, OPV in both houses does the job. I should stress that that does not necessarily represent a party view—I am sure many in my party would agree with me, but that is not to say all would. If our goal is that votes are saved and we have a simple system then I think it brings its own merits to the case.

CHAIR—We will move on to topic 3, which examines enrolment registration of parties and candidate nominations. The green paper examines a range of issues in relation to enrolment, including debate about the timing of the close of the rolls following the issue of the writ for the election, automatic enrolment, automatic update, online enrolment, proof of identity requirement and permitting enrolment on election day. I propose that we focus on these matters and then come back for the registration of parties and candidate nominations towards the end of the segment. Mr Murray will be first in the batting order, followed by Dr Johns, then Mr Musidlak and then Ms Bailey. I will just hand to the Deputy Chair for four minutes. Andrew is not there? What about you, Gary?

Dr Johns—I have just picked up some elements on topic 3, and my numbering goes according to the paragraphs of the original paper.

CHAIR—It is 4.1 in the blue book.

Dr Johns—Okay. The debate rests on this concept of automatic enrolment, about which I have misgivings—the notion that some authority or department or whoever would enrol you on your behalf. The process is a bit irksome. However, we do have a compulsory system—you are meant to be in it. So there is the threshold question, which I am not overly comfortable with, but, if it were to proceed, certainly I would prefer an opt-out option. The fault is that if you did not want your data to be used to enrol you then that would be the preferred option. If one were to go down the track of automatic enrolment then I think automatic updates are perfectly reasonable.

On the question of online enrolment and online updates, I do not have any problem whatsoever. We now all live online and undertake our banking and all sorts of very secure contractual matters online. So I do not have a problem there at all, as long as there is a benefit here. I presume there is a cost in undertaking online enrolments. There would want to be at least commensurate benefit, but I think there would be.

Briefly, on the question of the close of rolls, I agree entirely that the rolls should remain open for at least seven days after the issue of the writs, and the electoral commissioners or legislators really should be able to give us best advice on how late you could leave the rolls open without unduly interfering with preparations of the roll and so on for election day. In that sense, the notion of having enrolment on election day I would be uncomfortable with, if it were to slow down procedures on the day. If there were any disadvantage whatsoever to those who had taken the trouble to get themselves on the roll before election day then I would not favour enrolling on the day; or if there were any delay, for instance, in declaration of poll or announcements of election results as a result of enrolment on the day. So always keep in mind that the system ought to be simple and most advantageous to those who bothered to get themselves on the roll. Thank you.

ACTING CHAIR—Thank you, Gary. Mr Musidlak?

Mr Musidlak—Questions of enrolment tend to generate a lot more excitement in winner-take-all systems like the single-member, rather than proportional representation, as do redistributions. A couple of our branches have a broader role than just supporting quota-preferential methods of proportional representation and operate as electoral reform societies. Our tendency is always to try to have as many people in those circumstances enfranchised, empowered and made to feel as though the system takes their views into account effectively.

It seems from the green paper that people have given sufficient thought to some of these automatic enrolment options. You would need to go back to voters and see that particular addresses that were being thrown up by a particular administrative system were in fact ones that reflected some change of residential address rather than some change of business operations or the purchase of a property that is going to be let out and things of that nature. With some forethought and checking with voters our procedures can certainly be streamlined. That would free up time for electoral officials to be more involved in promoting understanding of the electoral systems in the community.

ACTING CHAIR—Thank you.

Ms Bailey—I will deal with electronic enrolment using technology, first. We are completely in support of that for both enrolment and updating details. Reports from our Homeless Persons' Legal Service estimate that that would deal with 25 per cent of people that they came across: in being able to manage that part of their affairs. I am a bit confused about why, when enrolment is compulsory, you should be able to opt in or out of having your name automatically registered. I would have thought that to suggest that you do not need to register is a breach of the various acts. On the issue of when the rolls close: my understanding of the information coming out of New South Wales at the moment is that the recently announced Smart roll is that it removes the issue of when rolls should close; they can remain open until very close to the election day. Failing that, and also reading the committee's report of the 2007 election, there seemed to be absolutely no evidence at all about why the rolls should have closed on the day when the writ was issued. That certainly should be repealed. I will leave it there for the moment.

Mr Brent—Just looking around the world, most countries—most democracies—have state initiated enrolment; in other words, something like automatic enrolment. Perhaps paradoxically, they tend to have it in the context of voluntary enrolment. Also paradoxically, there is a relationship between countries that have compulsory enrolment and elector initiated enrolment. In other words, it is compulsory but it is up to the elector. That is the situation here. In those countries where the state does it, they just say, 'There is an election coming on and we are going to have a roll that is ready for anyone who wants to vote.' The issue of coercion does not really arise. In the blue book it says:

> One possible way in which automatic enrolment could work might be monthly data transfers received by the AEC from federal and state electoral authorities.

That already happens and it has been happening for almost a decade. The problem for the AEC is that they have all this information, Big Brother is already here in that respect, but all they can do is knock people off the roll at one address; they cannot put them on at another. So that horse has already bolted. Really, it is a matter of allowing the AEC, where they are sure that someone has either become of voting age or has changed address, to just put a tick in a computer field. I agree that in the context of compulsory enrolment an opt-out tick box does not really make sense. There are a couple of possible issues that can be raised with automatic enrolment. One is to do with the electoral roll per se. The Commonwealth electoral roll is probably the best database in the country of people's addresses, so we have always to be on guard about whom we give that too. Of course, the more comprehensive it is the more valuable it is. That is one issue.

Another issue is that this thing that we call 'compulsory voting' really sort of works because if you do not enrol and you do not vote you do not get into trouble. It is only if you do enrol and you do not vote that you get into trouble. If we do have a really comprehensive electoral roll you are going to have a much lower on-paper turnout. You are going to have lots and lots more people being chased up with fines. There are some countries where it is compulsory to vote but you do not get into trouble. Maybe if we are not going to move to optional voting—because I know that Professor Costar would not speak to me again if I advocated this—we could make it compulsory but you do not get into trouble if you do not vote. Because I think it is a problem running around fining people.

Senator BIRMINGHAM—You make the point when we were discussing OPV earlier that perhaps the ideal world would be one in which we had OPV but nobody knew about it. There is a certain parallel, I think, to the fact that everybody knows and understands we have compulsory voting, but those who care the least about exercising their vote and have a means, in a sense, to opt out by not being there in the first place or by falling off. And if they happen to turn up at the ballot box there are, of course, provisional voting mechanisms that can be followed, if need be.

Mr Brent—No, if they have dropped off they cannot vote.

Senator BIRMINGHAM—If they have moved?

Mr Brent—The rules were tightened up in 2006. If you have moved from one electorate to another and you have dropped off the roll, that is it. You cannot vote. I will just add that over 300,000 people tried to vote at the last federal election and could not. So not all the people are off the roll are those who do not care. There is a good proportion that accidentally drops off.

Senator BIRMINGHAM—And there is that issue, which I am sure we will come to at some length, as to how that is addressed. But nonetheless—and you reflected on this, particularly in the closing points of your comments—it does work quite well at present in terms of ensuring that the overwhelming majority of those on the roll are those who accept that it is compulsory to be on the roll and participate, although some of them still grudgingly participate. But they do participate and that gets maximum participation from those who are willing to engage, either because they want to or because they accept the compulsion element. And it gives a way out in a sense for a lot of people who just do not want to engage. Isn't that a better outcome for us? It is much like you said with OPV; we get that at present with the electoral roll. We get the situation where the public, if you ask them, all think it is compulsory and, overwhelmingly, most people do the right thing. In a proportionate sense, it is a very small number who do not.

Mr Brent—There is a large number who want to vote and cannot on election day—they turn up to vote and they are not on the roll so they try to vote provisionally or they just turn around and leave. This is all complicated of course by compulsion. If it is compulsory then everyone should do it, I suppose we could say. But if we were to imagine that we did not have compulsory voting, there are people who want to vote but suffer because the electoral roll is in bad shape. So it is not just the die-hard people who refuse to vote who do not vote on election day.

Prof. Williams—With those numbers that have been mentioned we are talking about hundreds of thousands of people; it is not a small number of people but in fact is literally hundreds of thousands of people who do want to vote but find that their details have not been updated, generally through their own inadvertence. I have seen the Australian Electoral Commission say in the past that with many of those people it seems to be that they assume their details are updated. They believe that the government collects this information and they cannot understand why it has not used the information that it already has about their moving address—it has been notified through a tax return or another authoritative source. Many of these people just cannot understand why they are not there. From my point of view I think that they have a good point about that. The system should ensure accuracy, integrity and the like but it should also make it as easy as possible for people to cast their vote and should not put artificial barriers in their way. Unfortunately, the data is very clear in that there are hundreds of thousands of people who are at the moment being disenfranchised through the weakness in the system.

Mr Green—In terms of the re-enrolment of people who have moved address and have not got around to filling in a form, if the state has got all this data and it can write to them at the new address and say, 'Mr Smith, we are aware that you are now living at this address and we propose to move your electoral enrolment unless you have some objection to this'—given the option that if they have moved their, say, car registration for some other reason apart from actually moving house. Something like that would then remove a lot of the problems with when the rolls close because they have already had their enrolment sorted out. What most people forget is to re-enrol when they move one year and there is an election the next year. By the time they come around to the election they have been knocked off the roll because they know the electoral commission knows they do not live at the address they are at on the roll.

Senator BIRMINGHAM—That starts to divide the issue up between automatic enrolment versus automatic updating versus an informed updating that ensures that there is at least a default automatic sense to it but it is an informed automatic sense, and you were talking about updating rather than enrolling.

Mr Green—There is a range of options here that cover a vast amount of things to do with enrolment, re-enrolment, people moving address, people moving address which is not a real change of address, people who are students at university and keep their enrolment at their parents' place; there is a vast range of things there to do with where people are living. And the one thing they are not always very good at it that although they might move their car, their electricity and their gas they might not move their electoral enrolment one month after they have moved, which is what the current act says.

Mr MORRISON—But isn't that the point. They will change all of these other things—

Mr Green—Well, they have to in that case or they might not have a car registered or they might not have gas.

Mr MORRISON—Yes, they have to. Under the Commonwealth Electoral Act you have to as well. The issue that was raised in our dissenting report was: at what point does the citizen no longer have to bear any active responsibility for participating in the electoral system? In the report we made a number of comments along these lines. Sure, if there is a way of making the process easier for you to go and update your details online—and I have expressed some reservations about some of the specifics of that, but the thrust of it, I think, is broadly supported. But at what point do we stop making excuses for the very simple act of advising the Australian Electoral Commission of your change of address or the fact that you have turned 18? At what point?

Mr Brent—That is a moral argument that you are putting.

Mr MORRISON—Well, it is!

Mr Brent—It is a bit too important to get bogged down in moral—

Mr MORRISON—I think it is very important to get bogged down in moral arguments, with respect.

Prof. Costar—It is not a moral argument—that it is the point. It is a libertarian argument.

Mr Brent—It does not work though; it is not working. The roll is in bad shape.

CHAIR—Hang on! Speak one at a time and let everyone have a go, because I actually want this on the record.

Mr MORRISON—Before the last election we had an increase in enrolments, which I believe was a direct result of the very fine campaign run by the commission.

Prof. Costar—Which cost $15 million.

Mr MORRISON—It was a very fine campaign and we promoted the idea to get yourself on the roll and to value your vote. You could say that it was a very moral argument that they put in their advertising, and it resonated and it worked. What we are cautioning about is that if you put a whole range of measures in place that say: 'You know what? It actually does not matter if you do not get around to doing it, if you couldn't be bothered and if you do not value your vote very much you can just rock up on the day and we'll give you a vote anyway.' If we want to put in place a system that encourages that sort of failure and works against all the incentives we are trying to give to educate people and encourage them to value their vote, I think we are getting the balance wrong.

CHAIR—I will take it over now because I want to have an orderly set of contributions. The batting order is: Mr Brent; Professor Costar; Ms Bailey is indicated; Mr Green; Mr Musidlak; and then we will go to Andrew, if he is back with us via teleconference.

Mr Murray—I am. I am sorry about that. The one you can hear me on conks out and the one you can't hear me on will work.

CHAIR—It is no problem. Would you like to start, Peter.

Mr Brent—Mr Morrison, your argument seems to be based on, 'I have got to keep moral fibre in the Australian people—they are going to get lazy and flabby if we don't keep them on their toes.' The states provide the architecture for elections: they set up the schools, they count the votes, the AEC has a wonderful website and they spend millions and millions of dollars to run elections. Running the electoral roll is part of it and leaving it up to the citizen has left us with an unsatisfactory electoral roll. It is true that in total numbers it was no worse in 2007 than it was in 2004—it was still not in great shape. I think you are bringing this moral hazard thing in again: people should do the right thing when they move—but they do not, so we just have to forget these hang-ups and be pragmatic.

Prof. Costar—With all the standard caveats about the necessity to not make mistakes and the integrity of the roll, I am certainly in favour of, as Anthony says, a spectrum. I can see no argument against automatic re-enrolment of people who are already on the roll—they have been good citizens—particularly as the data is being used to take them off the roll. Then, of course, they are sent a letter—the letter that Anthony wants sent is much better than the one that is currently sent—from the AEC saying, 'We have taken you off the roll. We believe you are enrolled at this address. Here is a copy of the purple people eater, fill it out.' Apparently, the

AEC has got data, and they say, 'Please fill it out and return it to us in X days,' and only 30 per cent do so. That has got something to do, of course, with the unbelievably reader-unfriendly state of the current enrolment form—it is not called a purple people eater for nothing: it is purple and it eats the people.

There is one point I would like to encourage the committee to find out: if we break down the non-enrollees, they seem to be concentrated amongst the young—the 18 to 24-year-olds. An assumption is made that these are the feckless youth, that they are not yet good citizens—they may even be mildly un-Australian—and I am not sure whether that is true. I encourage the committee to ask the commission if they can provide data which shows how many of that age cohort have sometime been on the roll because they may or may not be feckless, but we know they are very mobile, and the more mobile you are, the more likely you are to get culled off the roll. This has ramifications. We will talk about education later, but the solution that has been put up is that if we educate the feckless youth, they will cease to be feckless and they will enrol. I think that is a leap far too far. Before we make that leap, let us find out whether they have ever been on the roll.

The other point about automatic enrolment is—I have talked to a lot of high schools over the years, and I always probe them on this—that the number of 17 and 18-year-olds who think they are automatically enrolled is amazing. Their logic is, 'It's compulsory, isn't it? Why do I have to do anything?' There is a view out there that the AEC already automatically enrols 18-year-olds—which it does not, of course. In some places it sends them birthday cards and whatever. I would argue pragmatism on this. The fact is that enrolment is compulsory, and it has been compulsory since 1911. No democrat—small 'd'—is going to mount an argument that there is a case for suppressing the franchise. We are effectively suppressing the franchise here because we have not allowed our processes to keep track with the technology.

It is as simple as that. I do not see that there is any high philosophy or ideology in it at all. It is simply a mismatch: the old system, as Mr Brent would point out, is all paper based, and that has gone—we are web, and we have only half updated it. As Peter says, we are good at taking them off the roll but we are bad at putting them back on.

Ms Bailey—I would agree with that—the lack which has just been described as the poor use of technology and how we need to catch up. The other point about automatic enrolment is that it is probably going to happen at a couple of points. One is when young people turn 17 or 18 and the other is when they take out citizenship.

I would not see automatic enrolment as being without an educational component. Someone mentioned $15 million spent on trying to get people on the roll. I would have thought a much better use of that—which I think we will discuss further on today—would be as part of a civics education campaign to, rather than just convince people that they should be on the roll, actually talk about why they should be on the roll, what they can do with their vote and what it means. This is particularly for new citizens, who may not have any history of voting or even have been able to vote in their country of origin.

The other issue, apart from the savings and efficiency that the AEC would hopefully gain from this, would be about linking identification with this issue. We have not talked about identification yet, but that is a particular issue for clients at PIAC. If this could somehow

streamline that identification process in enrolling people, that would be a huge benefit for people who are marginalised as well.

Mr Green—I think one of the problems is that the legislation is very old fashioned. The Electoral Commission has to write to you at the last known address. They have now started to write to the address where they know the people live, but they used not to do that. Still, the legislation is all about writing to the last known address. You are not supposed to do enrolment till 30 days after you move and have settled into your new address. You change your driver's licence, your power bills and all those things as soon as you move, but 30 days later you do not think of changing your enrolment, especially because you do not actually do anything with your enrolment till the election comes around, which is why in 2007 there was a surge in enrolment. Everyone knew the election was going to be then. It was an election with a lot of attention on it, and people did their enrolment. That is where, particularly, re-enrolment is a good thing, because with most of these people the Electoral Commission knows who they are and where they live. It is very easy to recognise that they have moved. You can write to them to do it, and you get all those off the agenda and the Electoral Commission has more chance to look after the harder ones, for whom you have to check identity and address. You also do not have this surge of them as the election approaches as people finally get around to regularising. If the commission is allowed to automatically re-enrol, most of those enrolments, which are now done quite late in the process, are done more evenly through the term and are sorted out well ahead of time.

Mr Musidlak—I will just make a quick point. There is a significant degree of public disengagement from the electoral systems because a large number of seats are seen to be safe. People have the feeling, 'What does it matter?' That manifests itself in the huge numbers that put through changes of enrolment when the election date is specified. On election day, polling officials take a whole lot of change of address notifications. Under electoral arrangements where people have greater influence and a greater degree of effective voting, I think you find greater willingness to attend to these matters.

Prof. Williams—From my point of view, I fail to see that there is a strong principled objection to having some sort of automated enrolment. I think the law is very clear in what it says at the moment: enrolment is compulsory. In fact, if we enforced that side of the law as much as we do the side on failure to vote, that in itself would lead to a set of consequences that do not yet occur in the same way. The law is very clear: everyone eligible must be on the roll. I think the question is: how is that achieved consistently with the law?

I also cannot see any particular freedom of speech or like concerns. It just does not raise a set of human rights concerns. If you are really worried about that, it is the compulsory voting—or, of course, really the compulsory attendance—that is the sharp end. That is the end that really matters if we are concerned about these issues. I think that for some reason we are channelling some issues about the compulsion at the end of the process into the enrolment section, which is just the administrative part of it. It really should not raise any of these issues.

I think Gary also had a point in any event: if we are concerned, have an opt-out or something of that kind. I am not sure I would or would not support that. I would be happy to have it, though, if people are concerned enough that they want to remove themselves from the process, because in the end I think it has been shown that these processes are flagged very badly behind the technology and the like. For me it is simply a common-sense issue of catching up.

Mr Brent—Just quickly, these other issues—closing of the rolls, provisional votes, proof of ID—that you parties have been arguing about for years would be rendered almost moot, because if you had a comprehensive roll then these things would only occur at the margins and there would not be big arguments on those things anymore. It would guard against fraud.

Mr Murray—Everybody has said very sensible things. You cannot really disagree with them. We do need more efficient, effective and automatic administrative systems. I do think the system should distinguish between people enrolling for the first time and people who have already been enrolled. It should be much, much easier for the second class. The only point I would really make is that, until such time as COAG or the government or the committee can decide on just what better systems can be introduced, it may be best just to introduce a default provision for the moment. You know how with superannuation if they lose your address you go off into a kind of lost account but you are not taken off the superannuation lists? Really, if they are not sure where people live, they should remain on the voters roll but just be identified as being lost, and hopefully they will be refound.

CHAIR—Gary, have you got anything to add before I go to Scott Morrison?

Dr Johns—No. I think we are all in furious agreement.

CHAIR—Scott?

Mr MORRISON—I am probably not. I am with some. One of the figures that really staggered me out of the last election was that one in seven eligible voters were not enrolled, did not show up to vote—some 700,000 people just did not bother to show up—or did not fill out their ballot paper properly, either intentionally or not intentionally. That was the balance, around half a million or so. I think that says something fairly profound about what people are thinking about our system. I would confer with Brenda's view about the civics education programs. I know they are coming up later in the discussion. Fostering what I genuinely call a mutual obligation in this process is really important. I have no objections to the idea of data mining and using all of that technology and, as Antony says, upgrading the act to use more modern language and modern systems—

CHAIR—What about online enrolment?

Mr MORRISON—I have already said positive things about online enrolment, so long as we have appropriate safeguards in place. All of that is worth while, but all of that does not solve the fundamental problem that we have one in seven voters who seem to be not that interested in participating in the system. You can compel them—and there have been some suggestions along those lines as well—but my approach would be to suggest a continuing advocacy with the public, a continuing education of the public, so that people would be aware of their responsibilities. Frankly, if they do not want to exercise their responsibilities or live up to them, they are in breach of the act.

Mr Brent—Speaking about that one in seven, Mr Morrison, if you add in the several hundred thousand who tried to vote but could not, you might end up with—

Mr MORRISON—I included those. They are in my figures.

Mr Brent—No. They are included as people who do not want to participate, but if you add them in then you end up with probably one in 10 or so.

Mr MORRISON—I was including those who were not on the roll. You need to get on the roll, you need to turn up to vote and you need to fill out your ballot paper properly. I do not think these are incredibly burdensome obligations that we are putting on our citizens.

Prof. Costar—You should not have provisions that kill provisional votes for dubious reasons, either. I think that is what Dr Brent was referring to.

Mr MORRISON—I think I stated what I thought fairly clearly.

CHAIR—People know my views on provisional votes, but let me put them on the record again. There is a signature there on an envelope that can be compared with a signature that the Electoral Commission already has from an enrolment or a transfer of enrolment. I would have thought that is sufficient if there is a question mark as to the identity of the voter, as against having to bring back a drivers licence or whatever. What concerns me is that we want integrity in the system but there is so much red tape that people get knocked out. I would have thought that we should facilitate things. Correct me if I am wrong, but the evidence of multiple voting—we had this before—is minimal. The evidence of systematic fraud is minimal. Yet we insist on Noah's Ark provisions in a modern world. I just put that on the record. I do not want to open it up again, but that is my problem with the current proof-of-identity provisions. They are actually knockout provisions. They are not about finding out the identity of the person, because it is established through the signature and, if there is a doubt, the vote is kept out.

Now, could I have a resolution that we have the authority to form a subcommittee of three, if need be.

Senator BIRMINGHAM—I so move. In doing so, I thank all the witnesses and apologise that I have to leave a little early.

CHAIR—That is okay; I appreciate that. The next matter is education for electoral participation, topic 4 in the campaign. The green paper identified a range of options, focusing on electoral education for the general community and specified groups who may be less likely to participate fully in the electoral system in the general population—namely, youth, Indigenous Australians, migrant citizens and person experiencing homelessness.

In relation to the campaign the green paper discussed media blackouts, clarity in the operation of electoral advertising and truth in advertising. I will start off with Ms Bailey.

Ms Bailey—I will take up the issue of education. PIAC has an advocacy training program. For the first part of this year we did a lot of training and education leading up to trying to get people involved in the discussion about protection of human rights. We spoke to and had people attending our courses—about 1,500 people in New South Wales. I mention this because I cannot stress how strongly the weakness of people's understanding of democratic systems is. The people that we have contact with are community workers—well educated people, engaged people—but they are always shocked by the end of the day of training that we do about what they did not know about the system. In terms of starting a civics education program at a very

young age and continuing that to involve people in our democratic system, we could not stress that highly enough.

Mr Musidlak—One suggestion that the Proportional Representation Society has put forward before is that an Australian democracy website would be a tremendous step forward. At the moment we have got each electoral administration having its website. But they have to look after a particular electoral act, and the provisions of those electoral acts may be unusual or have historical quirks et cetera. If you had an Australian democracy website you could obviously have links back to all of these specific administrations. You could also then get into Australia's wonderful history of electoral innovation and even into facilitating debate about where we should go and so on. You would probably need to outsource the construction of the website periodically. I am sure there would be plenty of academic groups. You might even think of inviting the Parliamentary Library after getting some additional resources in the first instance to set something up and then keep it going through periodic tenders. A single portal at which people could find out just about anything they would want to know about Australian democracy would be a very worthwhile step and would save money in many other senses.

CHAIR—Who do you see administering that? Do you see that as an arm of the Australian Electoral Commission?

Mr Musidlak—You would want some sort of independence. Electoral commissions tend to see themselves as needing to administer pieces of legislation. A lot of them get very fearful about doing anything other than according to the black letter of the law. I think we need to be a bit more creative, which is why perhaps we could do it under a budget initiative for the Parliamentary Library, where people are used to doing these things—or an academic consortium might initially put it together. You could get a lot of goodwill and people being prepared to contribute.

Prof. Costar—At the risk of being self-preferring, I recommend the Democratic Audit of Australia's website. It is not, I will grant you, the sexiest website in the world, because we have not got any money. But there is a lot of stuff there and it goes back 10 years. There is almost any matter to deal with Australian democracy you could find in the archive. I will leave it at that.

CHAIR—Can you give us your website address? We will advertise it.

Prof. Costar—Democraticaudit.org.au.

CHAIR—This is going to the world, you see.

Prof. Costar—I will be really quick because we are running out of time. Civics education in this country has been a failure. The amount of money, inquiries and activities that have gone on in the last 20 years has been enormous and the effect has been almost zilch. The worst decision ever made was to put civics into a school curriculum. Teachers do not like it. They are anxious about being accused of being partisan. The specific training in that area is low. The kids just treat it as another piece of the school day. They either like it or they do not like it. They like biology; they do not like civics. So there needs to be something better than that.

I got myself into trouble recently for giving the Australian government a serve for closing down the AEC's education centre in Melbourne. The problem with that is that Melbourne was the only place outside Canberra that you had such a centre. The ones in Perth and Adelaide were much more modest activities. I thought the government got its priorities wrong in the budget. It closed that centre down and said, 'All the kids can come to Canberra.' I did a few figures. Last year only 24 per cent of Australian year 6 kids—which is the big cohort, but not the only one—actually visited the Australian Education Centre, and no more could because it could not take any more.

The $13.1 million that the government allocated to Indigenous electoral education and enrolment struck me as a very large figure. It may well be that it is doing catch up because of the scandalous decision that was made in 1996 to close down the liaison units, within each of the electoral commissions, that dealt with Indigenous enrolment. It seems to me that the government needs to spread that out a bit. Of course, Indigenous people are a group that need to be targeted in a positive sort of a way.

I really do not know how you are going to run education campaigns. It becomes very difficult. One group that does need to be educated—it might be a better way—are journalists. Senior journalists have told me that if a story comes into a newsroom and it is about the Constitution or electoral procedures all the journalists dive under the table: no-one wants to go near it. I do not know why that it is; it seems very strange to me.

CHAIR—Force of habit.

Prof. Costar—It might be. What can one commission—or even all the commissions—do? How can they get out there and educate all these people? It might be better to educate the people who are regularly writing about electoral matters. Who knows?

My last point: please let us not waste time on truth in advertising. My recommendation is to go back and read the second report of this committee's predecessor—the report of the Joint Select Committee on Electoral Reform brought down in 1984—which showed that the whole truth in advertising, while desirable, is unachievable. I know that former Senator Murray will not agree with me but the South Australian alleged solution is not a solution. It has worked a little bit in South Australia. The South Australian model tries to separate out facts from opinions and whatever. That cannot be done. I think you have to leave truth in advertising.

I could recommend that if the committee wanted to it could look at the submissions and transcripts of the Victorian Electoral Matters Committee inquiry into the Kororoit district by-election. That addressed all these issues and they will have a report out early in the year.

Prof. Williams—On the civics education point, I think it is appropriate to acknowledge that the knowledge is often quite poor in this area across all age groups, but particularly in the young age groups. This is another one of those factors that comes to the issue of enrolment. There is even a basic lack of knowledge about the need to enrol amongst many people. That has been confirmed through national testing results, including those released early this year, but polls over a very long period of time show that basic knowledge is very low. I think it is also important to recognise that that is despite the enormous goodwill that there has been in this area from governments of all persuasions, and also the work that the AEC has done over a very long period

of time. This has been a real priority area and a lot of money has been put into this area but it has not delivered the results. That is clear from the most recent results this year.

I would be looking at a couple of things. I think that civics should be part of the national curriculum but I think that the emphasis needs to fundamentally change from what I see as knowledge transfer, and just passive learning about legal material and the like, to a much more active engagement in civics. I find that the sorts of education that work most effectively in this area are things like constitutional conventions and mock parliaments, and actually actively engaging in these things. Otherwise it is the sort of material that goes in one ear and out the other.

I know that when university students—even the most talented students—are raising the issue of the sorts of laws that congress can pass in this country you have a real problem. That is because the knowledge is just not real to them. It is not engaged in an effective way.

The second thing that is a barrier that is often not understood is just the quality of the material that is being educated about. Because the system in some respects is so discordant across the federal and state levels, because the act is in a mess, because the system is overly complex, because there is a range of problems around the use of technology and the like, it is very difficult to educate students and other people about the system. It is simply not simple enough to be transferred and understood by them in a reasonable period of time. For me, one of the strongest arguments for reforming the system is to actually put it in a form that is intelligible so that education programs will begin to be far more effective than they are at the moment.

Mr Brent—Australians are not interested in and do not have great knowledge about our institutions and the history of our electoral system. We do not have the reverence for our Constitution that the Americans do for theirs. This is largely a product of our history—the absence of wars and other colourful things that you can make films about and tell large stories about—and that is just the way we are. It is in our DNA. It is a negative thing to say, but it is hard to see how we can change this. I agree with Mr Musidlak's idea of a website. I would not have it with the AEC. The AEC is too obsessed—rightly obsessed—with appearing buttoned down and sensible and not wanting to hit the headlines. We want someone who is prepared to hit the headlines. If you look across the Tasman at New Zealand they have three bodies, one of which is largely concerned with education. They have groovy young people with colourful hair running around sending SMSs to people. You could do that, except much more. The AEC would not want to do that because they would find it embarrassing. There is certainly a large story to tell there. There are colourful characters with big beards and lots of interesting things happened. We do not tend to know about it, so there is potential there.

Mr Green—The other thing about civics education that the Australian Electoral Commission try to do is to teach preferential voting and electoral systems with almost no reference to the politics of the day and to who the parties are, which always makes it slightly devoid when you are trying to teach students about preferential voting. It is not actually about what they see and perceive as being politics. The only comment I would make is about what Brian said about the lack of knowledge of some things by journalists. I was speaking to someone who was doing some work for the Electoral Commission, and there was recent coverage of the Queensland redistribution. It was covered in the newspaper as a 'Ruddymander', as one journalist called it. There was some just badly informed material about what redistribution does and it was badly

reported. That just got out there in the public, to the concern of the Electoral Commission. That is bad writing by the people involved in doing things like that. They did not understand the system. That is where I think that some of the education should go to: people should be better informed about some of those things. In a sense, the Electoral Commission needs to do a bit more work in talking to the press gallery and journalists on those sorts of subjects and in being more accessible with real information.

Mr Musidlak—At the moment the system has a lot of compulsion built into it, whether it be with attendance, enrolment, marking of preferences et cetera. If the committee, government and other governments were minded to put a bit more emphasis on the role of voters, you would have a better story to sell. If people could understand that they had real influence and the way to use it and so on, then you would have a very effective mechanism for devising programs and for people believing that it was going to make a difference.

Dr Johns—I will talk just briefly on civics education. I think that at the end of the day it has to be school based. I know that teachers may be reluctant to teach this, although there are too many teachers who were not reluctant to politic. As well or as badly as it has been taught, there is a case to be argued that it is a fundamental obligation that we place on our citizens and, if it is that important, we should least incorporate it into the school curricula. Of course I agree, George: it ought to be done in a role-play way. I have observed these things and been involved in them from time to time, and the kids have enjoyed them immensely, I think.

You can only keep trying. We cannot afford, for instance, to allow a generation to go by and not try. We will continue to try. If we are not always as successful as we would like, that really is not the measure; the measure is that we believe that the system is important, that it should have integrity and that people should know about it, and we will continue to inform people about it. As long as we keep that in mind, how we do it is not quite so important. That is all I have to say on that. Are we going back to other matters—regulation of preselections, primaries and these sorts of topics?

CHAIR—I think we will do all that in the open session.

Dr Johns—Good.

CHAIR—You can open anything up there. I am going to rip through the next topic and you can give us your pet hates and loves. Do you want to make any contributions on this, Mr Murray?

Mr Murray—Are you still on the use of education?

CHAIR—Yes.

Mr Murray—I heard some of what was being said, and I can only say two things, as strongly as possible. The first thing is that we have to modernise our legislation so that it is flexible, reactive and modern. The second thing is that we really do have to give the authorities and agencies the money to have highly interactive and extremely effective internet systems. Without doing anything in your pocket, Antony, I just love Antony Green's website, for instance.

CHAIR—We all love Antony's website.

Mr Murray—Yes. Honestly, the standard of some of the electoral commission websites really leaves a lot to be desired.

CHAIR—Can I just say that, in terms of the recent redistribution, I found their website the best that it has ever been for obtaining information.

Mr Murray—You are right. By the way, I did not say the AEC website; I said some of the commission websites that are about. We can do a lot better, I think.

CHAIR—Yes, of course. It is an ongoing system. If you have not got anything on this aspect, then I will go to Professor Costar, and I want to make a comment before I go to the next one.

Prof. Costar—We love Dr Brent's website as well.

CHAIR—I know that, but I have only just discovered Dr Brent. I am a New South Welshman.

Prof. Costar—I would just like to reinforce what Professor Williams said about the way you teach what is called civics. I am still of the view that the ordinary classroom is not the place to do it. I use the now defunct Victorian AEC education centre, which was very interactive, as an example. It was not people lecturing at schoolkids; it was as if the schoolkids were going through an interactive museum. The feedback that I saw that was given on that and is in the AEC's report as well as elsewhere was that it worked very well.

The reason that it worked well is that, rather than having the teachers in the classroom, this was a bit of an event; it was an excursion. The kids were getting out of class but they were coming to teachers. The people who were delivering the program at the centre were trained teachers, and that worked very well. I know that it works well here in Canberra at the Museum of Australian Democracy in the Old Parliament House, but you cannot expect all year 6s to be able to get to Canberra.

It seems to me that the federal and state commissions really need to be encouraged and to be funded—to be fair, you do not just load things onto them without funding them—to establish such things at least in each capital city, with a capacity to go on tour. That is what will excite the kids. Remember: if you educate the kids in this, they will educate their parents for you.

CHAIR—Can I just make this comment. In the 19½ years I have been in the federal parliament I have visited a number of schools in my local electorate. In recent years it has been as a result of visits to the parliament and then meeting with them in their classrooms after they have visited parliament—and I have visited all ages. The fascination that I have found is that the visit to parliament has certainly got them going in terms of inquiry, amongst other things, because they could see it practically. The enthusiasm seems to be there for the younger kids, and I am talking year 6s mainly—around that period. But when I go to year 10 and year 11—and I have been to a few—cynicism creeps in. The way I deal with them is not politically—it is civics education. But I found it fascinating that interacting with their visit here as local member and knowing that I was coming to talk to them afterwards and then seeing these kids, even years

after, getting collared in the street and their level of knowledge and following it. I think that would be true of all.

I think the point I wanted to make was that I have a different view. I think the earlier you get them, the more enthusiastic and the less cynical they are and you have a better chance of having a level of interest. If it is left until year 10, 11 or 12, I think you have lost them. That is just my anecdotal, personal observation. This program of getting them here in year 6 is a good program. Not everyone can come. That is my little contribution, for what it is worth.

We will go to the next topic, which is topic 5 on polling. The green paper examines the rise in early voting and arguments for and against electronic voting and also internet voting. In addition, the green paper discusses safeguards against multiple voting. I think I will talk to Andrew Murray first, before we might accidentally lose him again, and then Gary Johns and then go to the participants here.

Mr Murray—Thank you, Chair. I would like to actually go off on a tangent, although it is polling and voting that I am talking about, because I think the people in that room will have lots of sensible things to say about your topic 5. I want to talk briefly about direct democracy and on two fronts. Firstly, on the referendum front, I have made a case in my submission for the consideration of a referendum, hopefully at the next election, on those issues which are non-contentious between the parties, which are either technical or mechanical changes to the Constitution, but particularly things like section 44. I really think that, over and above the election polling we are thinking about, we have to think about non-election voting and polling and getting on with the business of making a proper and effective and efficient changes where they have complete non-contentious agreement. That is the first point.

The second point is what some people think is a wacky idea but he is a very important one to many people, and that is plebiscites. Canada, Italy New Zealand, Switzerland, 27 states in the USA, Venezuela and Poland all have versions of direct democracy, sometimes called citizens initiated referenda. My view is that plebiscites should be a guidance not an instruction. I am not a fan of people bypassing parliament. I think parliament must make the decisions. But we have now through the Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007 an instrument for plebiscites. Probably today is not a good day to resolve these issues, but the issues of how plebiscites can be more effectively used in our community should be examined. They are, as you know, conducted: daylight saving, trading hours in WA, for instance—those sorts of things. I think they are an instrument that have their place.

CHAIR—Thank you, Andrew. I just want to keep this tight because I have just been informed that we are going lose our quorum at quarter past. We can pick up some of this in the next session. Gary, is there anything in particular that you want to raise?

Dr Johns—Very briefly: I do not think the notion that we can regulate for truth in advertising is very useful. It is simply not amenable to regulation. On lesser matters, I do not have any objection to advertising taking place at polling booths. That performs a very useful role. We might have a debate in open session about this whole question of early voting and the extent to which it occurs and/or be encouraged. I suggest that we discuss that later.

CHAIR—Peter, do you have any comment to make on this?

Mr Brent—I do not really have a comment at this stage. I might jump in later.

CHAIR—George?

Prof. Williams—I have a brief comment on electronic voting. I think the act should be flexible enough to give the AEC greater capacity to look at electronic voting. The fact that we now put tax returns and the like through the internet demonstrates the level of security that can be achieved in these processes. I am not saying that we will get there immediately but the evidence in other countries is that that is where the system is likely to go, and I think Australia should be recognising that in a more direct way than we do at the moment. Otherwise, I would say on the issue of technology that much of the Electoral Act should be technology neutral in terms of its drafting; it should not be prescriptive. It should also be very flexible in allowing the AEC and other agencies to embrace whatever technology is the most appropriate and most cost-effective for its various functions.

CHAIR—What about internet voting?

Prof. Williams—I am not advocating a particular type of internet or electronic voting; nonetheless, I recognise the difficulties of internet voting. I would simply say that that is the path we are inevitably going to go on and the law needs to reflect that. We ought to be taking steps now for trials and other things so that over the longer term, when we do go down that path, we can be confident that we have the right model.

Senator RYAN—Professor Williams and others may want to answer this in their contributions. Electronic or internet voting is a slightly separate but related issue. I would be interested in again trying to get to this point of, apart from certain distinct circumstances—for example, a friend of mine was on a mission in the Solomons and used the electronic voting experiment at the last election, which was quite challenging because of the data link—what problems are we trying to solve here? There is some simplicity and transparency in pencil and paper. A close election result—for example, in the electorate of McEwen—gives the public a great sense that bits of paper can simply be recounted. Sometimes we try and put in technology, such as a transport ticketing system, and I do not know where the added value is from doing that or what problem it is addressing. Again, putting to one side people with special needs and distance, I would be interested—

Ms Bailey—Why are you putting that aside? What you are not giving people is a secret ballot—that is the key. Do people in Australia have a right to a secret ballot or not?

Senator RYAN—I want to get that point next. Some people would benefit from it, if that were the most convenient means for them.

Ms Bailey—It is not convenience.

Prof. Williams—Perhaps I can address the point—

Senator RYAN—There is a secrecy issue as well, which I am profoundly concerned about. I know people in the industry who say: 'You have security or you have secrecy. It is virtually impossible to have both.' I would be interested to hear your thoughts on that.

Prof. Williams—You might look at a form of electronic voting because of the cost. It may be a far more cost-effective way of running a poll if it is done on a large enough scale. I recognise the difficulties of doing it on a small scale. Another one may be dealing with the level of informal votes and the capacity of an electronic system to provide information or to enable someone to cast a more effective vote. Another one might be transparency. Take, for example, the Senate system: if you had an electronic system, you might put the number 1 in that box and it might show all the preferences playing out for you. You immediately see on the paper in front of you how the party has decided your preferences will be allocated.

I am not coming to you as a particularly strong advocate here. This is not something that I feel particularly strong about but it is something that I think we will likely embrace in the future in the same way that we have in many other very sensitive areas—and other countries are doing the same. The evidence from other countries is that this can be done effectively. Once they have gone down that path, they do not tend to come back again because the advantages tend to outweigh the disadvantages rather than it being a system that has massive problems that need to be fixed.

Senator RYAN—Let us take the example of the system picking up informal ballots. The current law requires people to attend, doesn't it? It does not require people to cast a formal ballot, because there is no oversight of that provision. Would electronic voting potentially remove the right of people who have complied with the act by enrolling, turning up to vote—

Prof. Williams—It would just depend on how you designed the system. You could design the system such that you must turn up and be there for the electronic process but that you do not need to touch the computer.

Senator RYAN—You could have an 'informal' button on the bottom.

Prof. Williams—Well, yes—some other systems do that. In fact, they give you the capacity not to cast a vote—though, of course, it would not apply in a compulsory system. You can build in whatever you wish to build in as an option.

Mr Green—The ACT system allows you to cast an informal vote.

Mr Musidlak—But tells you in advance that that is what is about to happen—that, if you submit your vote, it will be informal.

CHAIR—Professor Costar, have you got anything at this stage on the polling section?

Prof. Costar—I am sorry, I have not.

CHAIR—That is okay. You can fill it in in the open session, if you want, because I am going to move on.

Prof. Costar—The only thing I was going to raise was the vexed issue of parties involved in postal vote applications.

CHAIR—That is okay; put it on the record again.

Prof. Costar—We have been a bit critical, I suppose, of the Australian system today, and that is probably natural, but let us remember how good it is, particularly compared to our United States cousins'. One of the great benefits of the Australian system is that parties play little or no role in the administration of the act. However, there are a couple of little blips, and I will speak of one blip.

As an elector of Higgins, I received my postal vote application form the other day. It came in an official envelope. There was a very official form, asking me lots of things. But, of course, when I turned over to the last page, I found—as I would have if I had filled all that out, which I didn't, because I will vote by attendance—I had a nice photograph of Ms Kelly O'Dwyer, the Liberal candidate, and lots of things about how good the Liberal Party is. If the Labor Party had been running I would have got another one which would have said all those things. And I got an envelope, prepaid and preaddressed—not to the address of the divisional returning officer of Higgins, however, but another address.

People were talking about deception before. This did not say what organisation this was; it just had a PO box. I know where it was going—it was going back to the Liberal Party. Again, if the Labor Party had been running it would have been going back to the Labor Party, too. And why? Because the major parties use the bits of information that are on that PVA to enter into their databases, Electrac and Feedback.

I would draw the committee's attention to what is known as the Chatsworth case—that is, the Court of Disputed Returns case in Queensland that was decided earlier this year. Caltabiano v the Commissioner I think is the full title. In that case the judge and the Queensland electoral commissioner had many things to say about why parties should not be involved in that process. I will leave it there.

CHAIR—I just want you all to keep it tight because we will go into open session and we are now limited.

Mr Musidlak—The Australian Capital Territory Electoral Commission has been at the forefront of electronic voting in Australia, and Phil Green deserves commendation. I would suggest to the committee that perhaps you could have a separate session with him. I have had some experience in terms of being on a reference group that Elections ACT set up before each election, and also being a casual polling-day official. They do appear very early after an election to make an assessment of what further advances in technology might be possible and how they can be introduced with fail-safe procedures to avoid possible difficulties et cetera. I have been very impressed with the way that systems have been set up that minimise the prospect of failure and certainly of hacking—none of that. The things that go wrong in North America, or are alleged to, are absolutely impossible because there has been a very thorough investigation.

At the last ACT election, we had the rolls being marked off on electronic devices. That really sped up procedures. If we cannot go there federally, I would suggest getting the AEC, in their training, to give people tips on how to expedite the handing out of ballot papers after going through all the prescribed procedures. They tend to be a lot more cumbersome and AEC staff often seem to be afraid to turn that part of the process into something that ought to be joyous for all polling-day officials.

Mr Green—Technology is coming in this area but we have got to avoid technological determinism, where you just take technology because you think it is what you should do. The Americans have gone down the path of mechanical, electronic and computerised voting because they conduct so many ballots on the same day that it is impossible to do it on paper. That is why they have gone down that path. Places like India and Brazil have adopted computerised voting, but that is to stop corruption at the local level interfering with the ballot. If computers are taken around it cannot be interfered with. So there are reasons for doing it down there. We have a relatively robust system that people have trust in so it is a bit hard to argue that we should abandon the current system.

But there is going to be a time—in 20 years time, say—when the commission is not going to be able to print all of those ballot papers because there is not the technology around in printing shops to do that sort of stuff very quickly. The ACT has tried these things; it has a fixed date, it has a well educated population and it is a city state. It is much easier for them to do it here. If they wanted to roll it out across all the electorates in the ACT they do not think they can do it in one day—it is too expensive to do all of that technology on the one day—which means you are down the path of internet voting and that is when you do have security problems.

We have to go down this path and there are lots of issues to address, but there needs to be planning for it, and I think that these sorts of issues could be addressed in areas like Sydney Town Hall and Brisbane City Hall booths, which deal with many electorates, and with overseas voting. These are the areas where you have a significant advantage in terms of paperwork saved by using electronic voting. There are actually a number of areas of the system, and with blind voters, where there is a chance to experiment with this sort of technology before we come to the point where we have to use the technology.

Ms Bailey—People have probably said enough about electronic voting that the only point I would make is that I am extremely disappointed for the clients that we have with disabilities who would be unable in the future to cast a secret ballot. I will take up the issue quickly about identification, which is in topic 5. Looking at the evidence of multiple voting, there just seems to be no evidence of fraud in the system. If you were to do a risk assessment and then ask what identification you need on polling day I would have to say it would be minimal. Any increase in asking for further identification, again, is going to disadvantage people. But if the system were to go down the path of requiring identification we could only stress that that form of identification should be as broad as possible in the options that people can use to show that identification.

CHAIR—I propose to go into the open session. In this session the opportunity exists for participants to raise matters that may not have been raised or to elaborate on issues already discussed. I have to point out that we have a time limitation—we have to finish by 1.15, so that gives us 20-odd minutes. So it needs to be short and tight if you want to make a point.

Mr Musidlak—On the Senate voting system, we have a very antiquated method of transferring surpluses—and unweighted approach—and one day it will turn out a result that will alarm people. Western Australia had an investigation into all of these matters by an academic, Dr Miragliotta, and as a result of that they have gone to Weighted Inclusive Gregory Transfer, which essentially means that if one vote is still fully unused and another one has been half used you multiply each of them by a transfer factor to establish the continuing value of each. And so you use up the same proportion of each of those votes in declaring the successful candidate elected.

The Australian Electoral Commission has a mindset against this. They come up with gobbledegook about transfer values not having normative significance and so on. It turns out though that if you have an unweighted system you are getting away from a single transferable vote. You have the possibility of transfer values going up and therefore people having more than one vote. This is a simple thing to amend.

Mr Green—We did not actually get onto some points on page 25, which is to do with registration of parties and candidates. That is what I would like to raise. If we are talking about better disclosure laws and about expenditure limits, then much of this is going to be based around the activities of political parties, which are still registered separately in every jurisdiction in the country. Most of the significant parties, where we are talking about donations and funding issues, are all national parties that are across all of these administrations, and yet we have this peculiar legal entity. We need to have some form of common party register across the country with each of the states recognising that single party register. That would acknowledge the federal nature of some of those parties as well and stop all sorts of problems to do with that area. There are some issues to do with candidate nomination to do with the Bradfield by-election, where multiple nomination has been produced under the central nomination process. That should be stopped. The parties should not be able to abuse their right to nominate any candidates without nominators—to use multiple nomination in that way. I am not saying they should be prevented from nominating candidates, but more than one should be forced to go out and get nominators from the electoral roll as independents do. This would stop what has happened in Bradfield. There are a number of issues to do with registration of parties that I think need to be seriously looked at, but they really need to be looked at at the federal and the state level combined.

Dr Johns—I have two matters. One raised the regulation of preselection, in paragraph 8, point 30. I do not know to what extent it was serious. I just think that right now I am against the rules being written so that the parties' internal matters should be interfered with unduly. But there is a scope now to enforce party rules through the courts and for people to air grievances. Whether or not that provides a remedy is another matter entirely.

The question was also raised about public preselection primaries. I think primaries are very appealing but I think that is a matter that the parties may come to in their own good time. But it is something that the parties in government—that is, parliament—should not be passing legislation on.

CHAIR—It seems we have lost the telephone connection to Andrew Murray so I cannot invite him to comment. Do you have anything to raise, Ms Bailey?

Ms Bailey—I have just one thing on political parties. While we do not have any comment about or suggest any control for how political parties might manage their affairs in terms of preselections and so on, in the previous green paper we had an extensive analysis of and recommendations for funding of parties and their campaigns. We would refer to those recommendations and stress that there is a need for harmonisation in that area.

Prof. Costar—This is where you get your wish list. On the big ticket issue, I would put forward that all the issues are important but the roll is the most important one we are facing. I think the two hot ticket issues in Australian electoral systems at the moment are funding and

disclosure, which of course we have talked about before, and the state of the roll. I would be encouraging the committee to make strong recommendations on those.

There is just one other thing. We raised section 44 of the Australian Constitution in the discussion paper; it is an embarrassment. It is one of the few clauses, of course, that was not drafted through the conventions. It was just lifted out of a piece of British legislation. It is grossly outdated, it is grossly inappropriate and of course it is entrenched. A parliamentary committee some years ago tried their hardest to see whether they could solve that problem without putting it to a referendum and in the end they said, 'No, we cannot.'

Prof. Williams—The only other option I wanted to put on the table was to do with fixed terms, which is an issue that was raised very briefly in some of the submissions. This relates to changes that are possible without a referendum to alter the Constitution. I just want to put on the record that it would be possible, I believe, for the federal parliament to achieve fixed terms without constitutional change. It is a matter of discretion at the moment and it is possible for legislation to regulate that discretion. So I just wanted to note that, if there were any desire to go down that path, you cannot extend the term of the House of Representatives but you can set down a fixed cycle for its elections.

Mr Brent—I have just a few random thoughts. We referred earlier to the state of the electoral roll at the 2007 election compared to 2004. I will just point out that it is possible for electoral authorities to artificially boost these numbers by not processing objections. I am not saying that that is what happened but maybe the roll is even worse than we thought it was. I hope that all polling stations have Palm Pilots at the next election. As was noted, the last Canberra elections had them and they are great for checking the electoral roll. They are a way of checking at any polling station if someone is enrolled in a different electorate. You would certainly cut down on the number of people unsuccessfully trying to vote, especially if there are some unprocessed objections there so people are still on the roll at their old addresses.

Also—just a snide comment—if people are not very interested in politics, part of the responsibility surely goes to the major parties for their conformity, their strict enforcement of their rules and their general greyness. I suppose that if we did move to PR you may get a more interesting range of politicians and people might be more interested in voting.

Senator RYAN—Professor Williams, I am interested in the legalities and technicalities of fixed terms. I will start by putting on the record my opposition to both longer and fixed terms. I just want to know what the legal means of that would be. Would it be restricting the power of the Governor-General to issue writs until, say, the third Saturday in October every three years? How would you draft such a bill and what would be the point of power?

Prof. Williams—The basis of the drafting would be that the Constitution gives the Governor-General the capacity to determine the election date. Of course, under convention that is advised, and it is well recognised that those types of discretions can be regulated by legislation. It happens very frequently that the Governor-General's actions are regulated by legislation. So it is simply a matter of parliament directing that the discretion be exercised in a certain way. It may be as you say; you may say the discretion is exercised such that after the last election the discretion cannot be exercised except by determining the election date as exactly three years time, or it might be a different determination to keep it in sync with the Senate. It would be

along those lines. But you would have to build in a few discretions and other things along the way, as do other models, such as the possibility of parliament failing along the way to achieve a coherent majority. But that is, essentially, the constitutional basis of it.

Senator RYAN—How would that interact? Do you think the double dissolution provisions would pose an issue for that, or would they just have a broad exemption, because they are also constitutionally entrenched.

Prof. Williams—They are, and whatever you put in legislation could not supersede the other constitutional provisions. By its nature, the Constitution would trump anything that you regulated by legislation, so you could not touch that. You could build it in as an exception in some way, but in following the ordinary course of a parliament you can regulate the discretion as to when to call the election but you put to one side any of the exceptional circumstances.

CHAIR—Does anyone else have any additional contributions they want to make?

Mr Musidlak—At the moment, half of the voters end up without an effective say, and this is one of our primary concerns. With a system where you have a preponderance of safe seats, people see very little local political contestability, and that can then lead to a sense of, 'Here's a redistribution; they're handing these seats out amongst themselves. What's the point?'—et cetera. I sense that in the short term we are not going to get very far with seeking five-, seven- and nine-member electorates and getting that sort of local contestability everywhere. But I also sense the committee taking an interest in the questions of optional preferential voting and matters of this nature.

I just want to draw attention to the fact that, in a peculiarly Australian way, a couple of seats at each election get determined by the draw of the order of places on the ballot paper in each electorate, and one day that will determine government also. For that sort of thing, Robson rotation, where you have party names on the ballot paper et cetera, is a very good device for ensuring that we do not ever get a government that has been determined by the luck of the draw in a couple of electorates.

CHAIR—I have a couple of procedural motions. Is it the wish of the committee that a document entitled Electoral Act 2002 No. 23 of 2002, as was just referred to by Professor Brian Costar, be included in the committee's records as an exhibit? There being no objection, it is so ordered. Professor Costar also mentioned three papers that were sent to the secretariat. We are still to retrieve those, but could I have a resolution those papers will be received by the committee, taken as evidence and included in the committee's records as an exhibit? There being no objection, it is so ordered.

I thank all of the participants in today's proceedings. I found it a very worthwhile format. A number of you have taken a lot of time out to make the contribution to this committee, which we really appreciate. Andrew Murray obviously woke up early because it was 6.15 in the morning in Perth when we were supposed to start. I think the evidence today was extremely valuable and we will forward it to the minister and to the appropriate authority as part of the green paper process. We will also forward those three papers. I think it is important that we engage as a committee. We do really appreciate your contributions. It certainly enriches the inquiry. I thank you very much for your attendance.

Mr Musidlak—I would like to make a final comment, if I may. I did not take the opportunity of bringing up all the points one after the other. In 1977 we had the constitutional change about replacement of senators. Again, it is a theme of the Proportional Representation Society. Our view is that the count-back arrangements within the Hare-Clark system are better from the voter's point of view because you get more candidates nominating but also better from the point of view of leaving no gaps. At the moment if a party becomes defunct, as happened with the Liberal Movement very early after that amendment, there is no guidance. At the moment if an Independent happens to be elected and then vacates we have no guidance. So we still have potential problems. Having another look at this area and examining count-back is an opportunity to deal with those matters. We would certainly suggest they are worth looking at.

CHAIR—Professor Costar, you have moved forward, so I assume that you want to make a contribution.

Prof. Costar—I am thoroughly ashamed to admit that I voted 'yes' to that referendum and it was a—

CHAIR—How many have we got in the Senate at the moment that have been appointed out of the 76?

Prof. Costar—We know that, of the Senate that retired in 2005, 40 per cent of those senators commenced their careers without meeting a voter. Some of them have subsequently met voters. We had one case where a person served almost a whole six-year term without meeting a voter.

CHAIR—Can I just ask, having raised this: what is a better system? Given what happened with the constitutional crisis where the Senate blocked supply, it was not the Senate that was elected and the appointments that were made from New South Wales and Queensland—although we know the New South Wales senator did not block—isn't it better than what was there before? If not, how do you make it better?

Prof. Costar—It was sheer chance that Janine Haines had been sitting second on that Senate ticket as a Liberal Movement person.

CHAIR—I am just asking—

Prof. Costar—Again, it was a knee-jerk reaction to 1975. There was a rush to do this.

CHAIR—But it fixed the problem.

Prof. Costar—It fixed the problem and created other problems.

CHAIR—So what are you suggesting? You have five minutes to suggest a fix.

Prof. Costar—I have looked at the count-back provisions. Some work and some do not. That is clearly one solution. There are multiple problems. One is the breaking of the convention. If you just removed it, there is nothing to stop that happening again, but in terms of how long the senator serves, I think the old system was better in that a section 15 replacement had to face the voters at the next federal election.

CHAIR—Which would lower the quota.

Prof. Costar—No. Well, maybe—

CHAIR—It would lower the quota.

Prof. Costar—Yes, it would but remember also that in those days we had half Senate stand-alone elections and we had House of Representatives elections. They had all sorts of problems as well, but at least—

CHAIR—It was actually a smaller Senate, too, pre-1975.

Prof. Costar—The person appointed had to get endorsement by the voters, short of six years. People would be surprised to find out how many people get into the Australian parliament without being elected.

CHAIR—But as best as possible under the current system, they conform to the declaration of the vote pursuant to the election, don't they? That was the whole basis—

Mr Green—The referendum in 1977 was essentially to solve two problems: (1) the interference with Senate numbers caused by the 1974 crisis—

CHAIR—Correct.

Mr Green—and (2) stopping the interference with the party membership of the Senate, which occurred in 1975. So it solved those two problems. It has created other problems with this representation but, given that it is in the Constitution and needs a referendum to change, someone has to come up with a good solution first, and I do not think we are going to get that in a hurry.

CHAIR—I am just asking: what is the solution? That is okay—it is a conundrum. I appreciate the fact that it has been raised because that is what this is about. It is nice to raise a problem; it is even better to have a solution. I again thank you all. I declare this public hearing closed.

Resolved (on motion by **Senator Ryan**):

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

Committee adjourned at 1.11 pm