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JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

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

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JOINT STANDING COMMITTEE ON

ELECTORAL MATTERS

Wednesday, 6 July 2005

Members: Mr Tony Smith *(Chair)*, Mr Danby *(Deputy Chair)*, Senators Brandis, Carr, Forshaw, Mason and Murray and Mr Ciobo, Mr Melham and Ms Panopoulos

Members in attendance: Senators Brandis and Mason and Mr Ciobo, Mr Danby, Mr Melham and Mr Tony Smith

Terms of reference for the inquiry:

To inquire into and report on:

Conduct of the 2004 election and matters related thereto.

WITNESSES

Committee met at 9.32 am

HUGHES, Emeritus Professor Colin Anfield, Private capacity

CHAIR (Mr Anthony Smith)—I declare open this public hearing of the Joint Standing Committee on Electoral Matters inquiry into the conduct of the 2004 federal election. To date the committee has received 165 submissions to the inquiry. Many of these have been detailed, well written and self-explanatory. Accordingly, the committee does not need to hear from every person who made a submission. The submissions have raised numerous issues which the committee is examining carefully. While examining the submissions the committee has identified a number of issues on which it believes it needs to take additional evidence in this second round of hearings. I would like to thank today's witnesses for appearing. I remind them that although the committee does not require them to give evidence under oath this hearing is a legal proceeding of parliament and warrants the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The evidence given today will be recorded by Hansard and will be covered by parliamentary privilege.

I would like to welcome our first witness, Professor Colin Hughes, to today's hearing. The committee has received your submission, No. 69, which has been authorised for publication. Are there any corrections or amendments that you would like to make to that submission?

Prof. Hughes—No.

CHAIR—I invite you to make a brief opening statement on some of the issues contained in your submission before I invite members and senators to ask questions.

Prof. Hughes—The major thrust—or almost the entire thrust—of the submission was to the question of informal voting, which has been a hardy perennial before the committee throughout its many reviews of elections. At the moment it seems to be getting worse again. There is a tendency to use percentages and, on the basis that you will never have zero per cent, percentages can creep upwards without causing alarm. But if we turn them into real numbers, now that divisions are running up around 80,000 electors, to say that there is a 10 per cent informal vote means that 8,000 ballots were filled in by people, and then have been put aside and did not enter the count. If it were said at the start of an election that a town, say, the size of Warwick, was not going to vote in that particular division, all hell would break loose and people would be deeply alarmed. But the fact that something of the equivalent number of votes can slip away without being remarked on needs more attention and an attempt to try to devise solutions, not to eliminate the informal vote, because this is impossible, but to reduce it to the barest minimum that is compatible with other criteria.

The submission then argues that several factors can be identified, three of which are considered in some detail. Firstly, there is what may be described as the 'educational' or SES handicap, and in the tables contained in the submission I have taken not being fluent in English as a reasonably comprehensive measure of that set of problems. Secondly, there is the number of candidates who are offering. Filling in a ballot for two candidates is very easy indeed, but it never happens anymore. Filling in a ballot paper for 10 or 15 candidates, which is an increasingly common phenomenon, is a much more taxing experience for people who are not

accustomed to filling in forms and numbering things et cetera. There may of course be the extra burden of linguistic handicap.

The third factor is the rule that requires a valid ballot paper to number a certain number of candidates and in particular there is the polarity between numbering all candidates and numbering as many candidates as you wish to. The conclusion that I draw from the various tables—and I need not rehearse them now—is that this is probably the only point of leverage that we have. Better communication to the people with disabilities is a continuing campaign and more can be done, but it is a very slow grinding at a large problem.

Controlling the number of candidates is a very tricky business and, by and large, nothing works. If you increase the deposit then you perhaps merely get a better quality of eccentric candidate but you are still unlikely to reduce the number of candidates significantly. Trying to build incentives for candidates not to come forward and clutter up the ballot paper may be worth thinking about, and in the submission I refer to the fact that the removal of the requirement to prove that you expended the money for which you were going to be reimbursed by the public funding process is worth thinking about. One now reads in the papers of very large sums, which bear no resemblance to the campaign that one saw being waged, are being paid out of the taxpayers' pockets. One of the consequences of this is that other people are reading those stories and thinking that this may be a way of reducing their mortgage or having that overseas holiday that they never had before. That may be worth thinking about.

Where I think there is a solution available, and it is a solution that has been tried now for some time in two states that account for half the Australian electorate—New South Wales and Queensland—is allowing voters to record only those preferences that they wish to record. I think that making the ballot complex and forcing people to state that they have preferences which they do not really have is an undesirable process. Having looked with some care at all of the results of those elections in those two states, I have been able, to my own satisfaction, to identify only a single case in which had there been a requirement for a full set of preferences it is clear that the outcome would have been different. That was a couple of elections ago in a rural seat in Queensland. There is an iffy case also from Queensland where you could have believed that that had occurred but beyond that you have to make a tremendous leap of faith to believe that changing the system has had any impact on the outcomes. Obviously, considering what the outcomes are and how they may be affected is a serious matter that the committee would wish to think about. So that is the bottom line of the submission. I think that it is very well worth your while to think seriously about introducing optional preferential voting for the House of Representatives because that is where the serious problem of informal voting is now occurring.

However, having said that, it leaves the question: what about the Senate? The Senate have already been covered by the invention of ticket voting two decades ago and so they have avoided the problem. Whether having a different method of voting for the House from the Senate—even though that method is now applied to the Senate ballot paper by barely five per cent of electors—is worth worrying about, I would leave to the committee. Doing anything that magnifies the discrepancies between the House and the Senate—having seen burnt fingers in 1984—is a worry. But I suspect that ticket voting could be left to its own device in the Senate and people will be sufficiently relieved to realise that they do not have to cast a full set of preferences in the House not to contaminate their Senate voting which, as I said a moment ago, after all, is confined to about five per cent of the votes cast for the Senate.

Having mentioned that, of course that then feeds back the other way: if ticket voting has been such a good device for the Senate, why not have it for the House? I believe that question is raised with the committee from time to time. It is not so obvious a need. Even when you have 15 candidates at a by-election, it is still not the same as if you had 50 or 75. And the downside of the Senate ticket-voting system—that is, encouraging people to abandon their independence of judgment and turn it over to the people at party headquarters, who may or may not have better judgments than they have—is perhaps undesirable and should not be encouraged to spill into the House, because the problem in the House is not that bad. Let us try an optional set of preferences first and then consider ticket voting for the House only as a second and less desirable—for a variety of reasons—option.

CHAIR—Thank you, Professor Hughes. That was a great introduction. We would like to ask some questions on the substance of this submission.

Mr DANBY—Thank you, Professor Hughes, for your presentation. Let us go straight to optional preferential voting and the effect on the informal vote. At 1.8 of our summary of your submission, you say:

> … informal voting is less prevalent in New South Wales and Queensland, which have both introduced optional preferential voting, when compared with Victoria and the Commonwealth, which have not.

Optional preferential voting takes place in New South Wales. If you look at your table 3, you will see that at the recent federal election Blaxland had an informal vote of 10.7; Reid, 11.7; Fowler, 9.11; and Watson, 9.10. I very much agree with you that these are all very serious figures, and we should be doing everything we can to reduce the informal vote. But, if you look at similar figures in Victoria, you will see that they are around three per cent, two per cent, four per cent in various federal electorates. You do not have a table of Victorian electorates but, from memory, I know the informal vote. My point is: isn't it because we have compulsory preferential voting at both state and federal elections in Victoria that the informal vote in federal elections is much lower in Victoria than this very high informal vote that you have outlined here in table 3?

Prof. Hughes—I am obliged to you for the point. I would agree with that entirely. I suspect this is a consequence of my deciding to concentrate on a single state so as not to flood the committee with variations. I think that is the case. It is desirable—as a general proposition not merely as to the informal vote and methods of marking the ballot paper—to make Commonwealth and state voting mechanics as similar as possible to avoid this sort of conclusion, and that point underlines that broad policy.

Mr DANBY—But couldn't you argue—from empirical evidence of the difference between the Victorian and New South Wales informal votes at the last federal elections—that it would be better to change the New South Wales and Queensland state systems back to compulsory preferential in order to lower the informal vote if your principal concern were the more than 10 per cent of people voting informally in New South Wales?

Prof. Hughes—It is a logical possibility. I think on the evidence that overall it could mean an increase in informal voting at all elections put together. I have seen no signs, inasmuch as I hear remotely about New South Wales and much more directly about Queensland, that that sort of change is a practical possibility in either of those states. If anything, I would expect the

arrangement to be adopted by other states rather than those two giving it away. But your point is right in that standardisation is another factor that can be built into any sort of equation.

Mr DANBY—Would you elaborate a little bit on your interesting point about the previous policy of full expenditure of funds allocated to you by government?

Prof. Hughes—There are a variety of reasons why people decide to stand for parliament but overwhelmingly it is public service and a belief that they are adequately equipped to provide some of this for the betterment of society and this neck of the woods in particular. There are people who go in for reasons of self-advertisement or indeed for the advertisement of a particular business interest in which they are engaged. I think of a curry house in Sydney that was promoted through parliamentary candidacies over a number of elections some years ago to the point that in fact when the proprietor decided his would become a political party as well it was called the Uninflated Party.

It is also the case that candidates are optimists and the seeming obstacle of getting their deposit back is not sufficient to discourage them. There used to be tax considerations as to that as well, I believe. I would not presume to know what they are now. I think in the past it was possible to recover a lost deposit as an expenditure. I would not swear to that before the committee, but I have a recollection that that was possible. Now there is this possibility. People choose a party label which has inherent attractions—the Anti-tax Party or the Children Not Having To Go To Orthodontists Party. A lot of people looking down a ballot paper for some criterion on which to prime their pump see this and vote for it. This is particularly so with the upper house as the challenge of the ballot paper is even more so. These party people may receive a substantial sum of money, by the rate of reward for votes cast, that bears no relation to the money by which they are out of pocket, so it is a nice little money spinner that might be worth trying. The deposit is not of a size to make the gamble riskier than it seems to them at this moment.

Mr DANBY—There was some public concern that the last electoral foray of Ms Hanson did turn a very nice profit for her. How would you handle that? Would you say that everyone is entitled to be equally treated with matching funding but if you do not fully expend the amount of money that you get then you have to return the difference?

Prof. Hughes—No, I think it is the requirement of evidence of expenditure that is the defect in the present arrangements. I appreciate the problem of the larger parties in having a vast set of people scattered around the country, spending money and getting or not getting receipts for it. Perhaps they would have to produce evidence for X per cent—80 per cent or 90 per cent—of what you have claimed to have expended. I appreciate the problem of smaller, non-professional parties who have complete novices who have never run anything in their lives suddenly running a Senate campaign or a House campaign. I can recall the first wave or so of the old system having to be applied. The poor devils out there were having to reimburse the commission for money that they could not prove having spent for months and years after the event. I think that is unfortunate and unhappy. That is not intended. Looking at a campaign, one can get a rough-and-ready idea—and the professionals in advertising, the media and party management could do it far more effectively than I—of what somebody has spent, to within a few triple zeros of the amount, and $190,000 for the One Nation campaign strikes me as quite extraordinary, as

someone living in Queensland and taking a keen interest in the campaign and its advertising in all media.

CHAIR—Before I hand over to Mr Ciobo, I have a couple of questions to flesh out some of what you said on optional preferential. Can we take it that, apart from being in favour of it for practical reasons to do with Queensland and New South Wales, you favour optional preferential as a matter of principle inasmuch as you see it as a happy medium between the first-past-the-post voting system, which, of course, just gives you one choice and the full preferential system that, in some people's eyes, makes you make a choice beyond the point at which you might be comfortable?

Prof. Hughes—If I had to rank the three options, it would go down in order as optional preferential, compulsory preferential, and first past the post. I think the theory objection to it is that you are asking people to say things that they do not believe and to do that as a means of exercising a right which they ought to have for all sorts of democratic, liberal democracy and traditional reasons. I could take an ancient historical comparison, which has not been seen for a couple of centuries now. I think that to ask people, 'Do you believe in the doctrine of transubstantiation?' and, if the answer is 'Yes,' saying, 'Well, in that case you're not going to vote,' was a bad example in the past of asking people to have beliefs and asking them to rank the communist before the fascist or vice versa, when they regard them as both equally evil, and so on.

I remember a state election a couple of elections ago when in one electorate there were three candidates of schismatic versions of a new right-wing phenomenon all standing. I, as a keen student of the problem, did not think I could get a playing card between any pair of them, and yet, if I were voting in that electorate I would have had to say I thought they were fourth, fifth and sixth, or something, as the case may be. This contaminates the quality of the electoral process, I believe. It is best to leave people to say what they want to tell you and then transfer that into votes by some satisfactory means. I think, for example, that the compromise for the Senate of having above-the-line and below-the-line is ideal in that regard, because it enables those voters who do not wish to turn their choices over to the party ticket to still exercise, at some time and with some care, their full set of preferences.

Mr CIOBO—Professor Hughes, yours is an interesting submission. I might pick up on the final point that you were just making. Is it the case that the difference with respect to voting above the line for the Senate merely comes down to the constituent effectively outsourcing their vote to the party rather than making a decision to only express what they believe in a particular way?

Prof. Hughes—I think outsourcing overstates it, for this reason: a lot of electors have a preference for a party and are not interested, quite possibly because they are living in a safe seat of the other persuasion, in the candidate offering and they want to advance the interests of their party. To that extent, they are not really abdicating but acting economically—as Downs and people like that who talked about voting theory would have said—by adopting a set of preferences that were offered to them by their party. They are doing what their party wanted. They listened to what their party leader and the local candidate said they should do and they have received for most of the life of the Commonwealth parliament voting tickets which tell them what the party wants them to do. All that the ticket-voting system really does is relieve

them of the manual task of copying the how-to-vote card. If you want to work back up the food chain, I think you end up with a Tasmanian type situation of prohibiting how-to-vote cards, because the gap between the how-to-vote card and the ticket is pretty small.

Mr CIOBO—The point is, as I think you just said, what they are doing is relieving themselves of the necessity and the mechanics of having to fill out all the preferences below the line. I guess my contention is that it is not that we are in some way enabling them to choose the beliefs that they wish to express, as I think you were trying to contend would be the case for optional preferential voting, but rather we are relieving them of the duty and the mechanics of filling out the full preference flow. I take some issue with the remarks you made along the lines of, 'Let them say what they want to tell you rather than forcing them to put forward views that they may not necessarily want to.' All I am saying is that, with respect to the Senate ballot paper, we are not actually doing that, are we? We are just relieving them of the mechanical duty.

Prof. Hughes—Yes; that is so. The Senate is a peculiar case because it is a multi-member constituency. It does not apply too easily to the single-member constituencies for this reason: in a single-member constituency it is quite extraordinary for the last two candidates in the ballot not to be the two candidates with the highest proportion of first preferences. I have figures and tables I could supply to the committee if you wanted them as a supplementary submission. In a single-member constituency, if you are going to vote Labor or whichever coalition party that seat belongs to, you have a pretty good idea that your candidate is going to be there at the final count, so casting a single preference for them which goes through to the final count is qualitatively different from what all the people do who want to strike a blow for greenery, antigreenery or whatever and then need to be jogged by the electoral system by being told, 'This is all very well, but this isn't going to finally decide who represents this seat, and that is what we need to know from you.'

If one broke the voting process down over time, in other words, went back to what was tried briefly in Papua New Guinea before the 1964 election—when the voters queued and could look around and see what was happening, depart from an unprofitable queue and attach themselves to a more profitable queue—or alternatively the second ballot system that prevails so widely in Europe, then you would introduce a time dimension that is lacking in the way that you go into a booth with your ballot paper, leave with a completed ballot paper and you have done your task for the day. That is the difficulty with taking that too far.

However, there is a problem with the Senate because there is always a chance. That is a different problem, which I believe is before the committee and I have not really addressed it in my submission. Are people getting elected who should not be elected just because of the Senate ticket system and what is happening with the movement of preferences across that?

Mr CIOBO—I am sure that causes many of us concern.

Prof. Hughes—I have been addressing the problem of optional preferential voting for the House of Representatives because of a particular problem in the House of Representatives. As with most problems, this spills into a lot of other problems, which are not in the submission. If it is of any assistance to the committee, I will try to improvise a variation on the theme as best I can at this point in time.

Mr CIOBO—In respect of the decision to undertake optional preferential voting, I am not convinced that by focusing on the informal voting percentage and asking, 'How can we shift the goalposts so that we can bring that down?' we are adopting a better method for people to express their will and desire as to who should govern them but simply shifting the goalposts so that we get a lower error rate. I put it to you that you could quite easily and conceivably come up with a number of scenarios—and I believe this has occurred, particularly in the state of Queensland. We have in Queensland, for all intents and purposes, a first-past-the-post system when it comes to optional preferential voting—a system born from people not so much taking the view that they would rather express themselves by not being forced to cast votes across all candidates as not understanding what is going on and not being too concerned with what the various parties and individuals represent. They simply say, 'That's the person I want to vote for, I'm going to put a No. 1 there,' and leave it at that. That, in effect, creates quite a profound change in our voting system. Is the informal rate really a measure of the way people express their view about who they desire to govern them or is it simply a by-product of a level of ignorance about what voting actually is and about the way in which they should exercise their vote?

Prof. Hughes—I will start with what has been happening in Queensland. The folk belief about this is, I think, that it is attributable to the Premier advocating that you only cast a first preference. This raises the question of whether the Premier is entitled to say that to people who wish to vote Labor to guide them in what, as I was saying a minute ago, is an exercise in single-member constituency where their subsequent preferences do not matter because they will all be lost at the first count if the second and subsequent preferences of ALP voters were taken seriously. Following from that, the question is: should people such as the Premier be told that they should not say things about how to mark a ballot paper—in other words, should we go down the unprofitable path of trying to convert Peter Beattie into a new generation Albert Langer?

Mr MELHAM—What a frightening thought!

Senator BRANDIS—That is a stunt even Mr Beattie has not thought of!

Prof. Hughes—With respect, I think that is a question of stopping people from saying how you are to mark a ballot paper.

Mr MELHAM—I suppose the difference between Langer, at the time, and Mr Beattie is that Mr Beattie is well within his rights to say that, given the nature of the voting system, whereas Mr Langer was outside the law in what he said—there is a difference—and was subsequently convicted, as you well know.

Prof. Hughes—With respect, that was only because the parliament changed the goalposts on him halfway through his exercise.

Mr MELHAM—I am saying that was what Mr Beattie was saying was lawful and what Mr Langer was saying was not lawful. That is the point I am making.

Prof. Hughes—What I am saying is that you could move the goalposts to catch Beattie if you wish to. Let us go back to the question of voting intention. When Senator Harradine was on the committee he constantly raised this in respect of the Senate voting system whereby voters who

followed the party voting ticket—particularly the ALP voting ticket—were swept away and ended up voting for Greens and Green candidates when had they known what became of their preferences they never would have marked the ticket vote. I think he had a valid point. I have often thought as hard as I could of whether there was any means of getting around what I thought of as the Harradine question, of finding out what the voters' preferences really were and implementing them as much as one could.

There was a requirement—I am not sure whether it is still in the act—that all the voting tickets had to be posted at the polling place. So, because of the size of the Senate ballot in New South Wales and Victoria, you had these monumental sheets of paper being stuck up as best the officer in charge of the polling place could achieve. At many polling places there were not sufficient flat surfaces to implement the requirements of the Commonwealth Electoral Act. This was a gesture in that direction, so that the voter who wished to make sure that his preferences were going where he wanted them to go could have a quick check on his party and other parties at that moment he entered the polling booth. He could be better informed and therefore cast a set of preferences or adopt a ticket that was closest to the set of preferences with which he had entered the booth.

Administratively this was a potential disaster, as evidenced by the Solicitor-General. I think the results of that election are now beyond challenge, so the story can be recorded. The Solicitor-General entered his polling booth at the 1984 election. Being familiar with the legislation, he looked around for these many sheets of paper, could not see them and inquired of the returning officer. He was told, 'It will only confuse the voters so I have not put them up.' Having thought very hard about that, it was clear that the results in Victoria had not been affected by that particular possibility, but I think that trying to get more information out to the voters is a tricky business. I tell that cautionary tale to the committee only to discourage interesting experiments that have downsides that nobody thinks of until you actually see them in operation.

Mr MELHAM—Professor Hughes, could I take you to page 4 of your submission where you state:

The increase in informal voting for the House 1996-2004, in contrast, is independent of change in voting method.

I suggest to you that maybe one of the reasons for the increases in informal voting over that period was as a result of the subsequent amendments that parliament passed to do with the Langer style voting which, in effect, took away the savings provision. I think that resulted in an increase in that informal vote of somewhere in the order of 25 per cent to 30 per cent.

Prof. Hughes—I had not thought of it, but I think you may be right. It was difficult to know with the Langer experiment what the projection of his curve would be. Would it be the case—as it is with so many new ideas—that it would gradually take over through word of mouth and media reports and keep going upwards, or was it a blip that was encouraged by a particular set of media attention, after which it would start declining again? It was clear that the Langerites never had an organisation sufficient to distribute handouts or pay for mass media advertising. Their effectiveness was a creature of media reporting and word of mouth.

Mr MELHAM—With that legislative amendment, given that the language disability involves the number of candidates, it seems that when you look at what the Electoral Commission has

produced—as you know, they have produced some studies on informal votes—a lot of it has to do with that savings provision having been removed. I am talking about the increase.

Prof. Hughes—If this were a book for publication, I would thank you for your footnote that I am now adding to the text because of it. I think that is a very substantial point that is worth mentioning. All one can say is that the outcome of an election is the consequence of a large number of factors of varying and often unknown and potentially unknowable influence.

There are two ways of attacking this. One is through very sophisticated statistical analysis in which a computer grinds numbers and comes up with multiple-digit results. I am of a generation of political scientists that have grave suspicions when you are dealing with the small number of contests that we are dealing with here—that approach really does not tell you all that much. The better one is the broad brush approach, where you take the top quartile and the bottom quartile, you look at them—they are very different—and then you basically spit in the wind and make informed guesses as to what may be at work in the distinctions between them.

Mr MELHAM—What I am worried about though is the result of the legislative change—that if we do go to optional preferential voting we will see a structural change in the system. And I do not want to throw the baby out with the bathwater. In terms of the Langer amendment we were all worried about the influence of the Langer advertising provision. That one legislative change of taking out the savings provision has meant a lot more votes have been taken out of the count. In terms of my own party, given that we had a policy of putting One Nation and Australians Against Further Immigration last, for a number of candidates the how-to-votes and recommendations to voters were certainly up and down and all over the place. Of itself that meant the absence of the savings provision is the explanation for those increased informal votes in the last two elections. It goes to the number of candidates and language disability. In other words, they were genuine mistakes. That is what my scrutineers reported to me.

Prof. Hughes—That may well be. There are not all that many surveys of informal ballot papers conducted.

Mr MELHAM—The commission have done some, I think. Prior to the last election they did one for 2001.

Prof. Hughes—Those surveys may well have been put on a website, in which case I am sorry I missed them. It may well be that all that the committee would choose to say is that at subsequent elections X divisions should have close studies made of their informal ballots to get harder evidence at that grassroots level before any further action is taken by the committee. It may well be that my seat-of-the-pants analysis is really reflecting an earlier generation of informal ballot papers, which would not, with respect, correspond all that much to the set that you have just been talking about.

Mr MELHAM—The other anecdotal evidence I would point out is that I can recall that prior to the 2001 federal election there was a by-election in the New South Wales state seat of Auburn, where there is optional preferential voting. The federal election followed very shortly thereafter and the federal seat of Reid had a massive number of informal votes as a result of people putting just the number '1' in the square, which is an indication that the variance of federal and state voting systems had an impact.

Prof. Hughes—I have looked at the evidence of contamination between the two systems in New South Wales and Queensland. At general elections this has not been the case, say, if the two have been very close together. I think that the phenomenon that you have mentioned for a particular by-election is a sort of temporally-wasting influence. If voters go in a couple of weeks to vote in the other jurisdiction it is likely. If it is a period of X months or Y years between the two elections it is much less likely.

Also, the material that is usually distributed at a by-election is less than at a general election. For example, a contaminated by-election following a different jurisdiction general election would not be terribly good because people are not told all that much at by-elections, or it does not get through to them all that much.

Mr MELHAM—I suppose my final concern is that by going to an optional preferential system, despite the fact that you say that there has not been much data about where it would have made a difference, you could end up with a situation where you do have a de facto first-past-the-post system—or, conversely, you could have a lot of exhausted votes in particular divisions which would mean in effect that members could get elected with less than 50 per cent of the vote, which to me is a problem, as I said. Is that a bigger problem than having an informal vote at the levels that we have? Shouldn't we reconsider reintroducing savings provisions? There is enough material now to show that a lot of votes are being wasted, though not deliberately—you cannot do anything about people who are going to do that deliberately, whether they are just going to have a blank ballot paper or whatever.

Prof. Hughes—My own feeling is that there is not a great deal of deliberate spoiling. This view has been held for a long time, because the best evidence of it used to be from a long time ago when there were still Communist Party candidates—and it was the monolithic Communist Party, not the fragmented three sets that subsequently emerged. There were situations where the Liberal voters very kindly provided data showing what happened with voters faced with a choice between Labor and Communist, and not a great many of them spoiled the ballot. There is a whole sense of obligation that if you have got this far you ought to do your best to come up with a valid vote.

Mr MELHAM—Did you look at what might have happened in Queensland in that election where One Nation got a lot of members of parliament if there had been a full preferential voting system, as against an optional preferential voting system? There is a splintering of the vote depending on where it occurs. I know that in New South Wales, for instance, the New South Wales branch of the Labor Party loves optional preferential voting because it is creating havoc with the conservatives in New South Wales.

Senator MASON—And the conservatives in Queensland, Mr Melham.

Mr MELHAM—Yes, I was going to come to that next.

Prof. Hughes—This in a sense goes back to the earlier concern about structural consequences. Looking at the Queensland and New South Wales experience, the only structural consequence that I think is discernible is in Queensland, and it is to discourage what used to be called three-cornered contests. This, I would have to say, was not unknown as a possibility when it was being introduced or being recommended for introduction. It had the effect of keeping each

tribe's crazy braves on their own reservation, and the result of this was that you did move not necessarily to first past the post but to a fairly healthy two-party system in which you were offered basic choices.

Two trends are observable over time. I have some figures about exhausted votes, incidentally—the votes that are exhausted that went into the count and did not come out again, not the first preferences that stayed with major candidates all the way through. When we are talking about 50 per cent of votes being exhausted now, we are talking about 50 per cent of a proportion of the ballot that is now running at 20 per cent ordinarily or 25 per cent in a year when both major parties are particularly on the nose. But it is not the case that 50 per cent of voters are casting those votes. We do not know what has been happening to the major parties, and it really does not matter because their preferences are never going to be counted anyway.

So to that extent we have a lot of first-past-the-post constituencies now. They are all the seats that have not changed hands since 1949 or since some other climacteric. There are seats that go back prior to 1949 that have not changed hands between the major players, and to that extent I am not worried about the possibility of a bit of shifting in a relatively small part of the system if the benefits seem to outweigh the cost.

Senator BRANDIS—As I understand your submission, there are really two main arguments in favour of optional preferential voting: the practical argument that it tends to reduce informality and the in-principle argument that it avoids compelling people to make invidious choices via the rank ordering of candidates whom they would not wish to vote for.

Prof. Hughes—It is an admirable summary. If you had said that at the beginning, I would not have had anything to say.

Senator BRANDIS—It seems to me one option, and I am not necessarily adopting this, that nobody has thought of is having a ticket-voting system for the House of Representatives like one has for the Senate, so that one could vote above the line by ticking the party box or below the line by ordering a full set of preferences for candidates. Do you have any views about the desirability of a system like that?

Prof. Hughes—It gets away from the problem that I mentioned earlier about disparity between a House ballot that was wholly ticket and a Senate ballot that gave you both options. I see no objection to it in principle. It would certainly be manageable in terms of ballot paper size, I would think. A 15-candidate House ballot paper, which occasional by-elections use now, would be cumbersome but not impossible. Thinking about the ballot paper size makes me remember something that I have broached on previous occasions: whether the committee should contemplate a fall-back position on ballot paper size. Perhaps we could follow the Indian model of producing a brochure ballot, because the pages are now too large to be a single sheet. You are familiar with the ACT's celebrated Legislative Assembly ballot paper of yesteryear. It is conceivable that you could get something like that emerging in the Senate. And perhaps there should be, because of the difficulty of legislating after the nominations are in, a fall-back position that, in certain circumstances, government council gazettes a brochure type ballot in place of the bedsheet that this has become.

Senator BRANDIS—I want to also invite your comment on the strategy of some political parties in optional preferential voting systems of saying to the electors, 'Just vote 1'. I will give you an anecdote. At recent Queensland state elections, the Labor Party has displayed at polling booths signs that say, 'Just vote 1'. Do you think it is arguable that behaviour like that, by implying that if you are going to vote formally you must only vote for one candidate—in other words, there is more than a recommendation; it is an actual instruction not to express a set of preferences—could be misleading electoral conduct under section 329 of the act, as it was interpreted by the High Court?

Mr DANBY—Was it an instruction or an exhortation?

Senator BRANDIS—That is the point, Mr Danby, and I am merely asking Professor Hughes whether he thinks it is arguable that it is more than an exhortation to say, 'Just vote 1', carrying, as it does, the implication if you want to cast a valid vote that is the way in which it needs to be done.

Prof. Hughes—This is an interesting subspecies of the wider question of whether how-to-vote cards should be scrutinised by the Electoral Commission before they may be legally issued. I started out being quite unhappy about that, but over the years I have got less unhappy just because of the dubious behaviour of parties and candidates that have been observed over the years.

There are two ways of going at it: one is to try to devise a legislative formula that has to be complied with; the other is to leave some discretion in the hands of the electoral authority, with instant redress available in the courts if a party or candidate thinks they got a raw deal. If there is sufficient time between the closing of the roll and polling day for this to take place, I am inclined to say, 'Make it a discretionary thing for the commission rather than try to devise a formula,' because you then have all sorts of problems with subjunctives, the use of the imperative and things of this sort. Ideally, it should be possible to say, 'You need only vote 1 if you wish to,' or formulas of that sort. Trying to prescribe an exact formula could be tricky and, of course, will immediately turn all the best minds in the party to trying to find devices for getting around an obstruction. So it is discretion and applying it widely to how-to-vote cards.

Senator BRANDIS—Coming directly to my question: do you think it is reasonably arguable that the bald statement 'Just vote 1' is sufficiently susceptible to being misleading that it would fall foul of the requirements at least of the Commonwealth act?

Prof. Hughes—I would put it slightly lower than that. I would say that I think it is quite undesirable. I think speculation of that—

Senator BRANDIS—Why? Because it may be misleading?

Prof. Hughes—Because it might mislead some electors. The problem which is perennially before the committee is prohibiting misleading advertising of all sorts. That is a can of worms that perhaps had better be left closed on this occasion, but it starts to edge into that territory.

Senator BRANDIS—It does. Finally, on another topic, coming back to the question of public funding for candidates who achieve beyond the threshold and taking, specifically, the case of Ms

Hanson's candidacy for the Senate in Queensland last year, I think the ultimate figure was $190,000-odd that Ms Hanson received from the public funding system, wasn't it?

Prof. Hughes—I have seen that figure in the papers.

Senator BRANDIS—It was something around that. As I understand it, there was no obligation to account for the expenditure of one cent of that money.

Prof. Hughes—To the best of my knowledge, that is the case. But I am subject to correction because I have not been concerned with the administration of the act for a long time now: 15 years.

Senator BRANDIS—I think this is not a controversial thing to say: the policy of public funding is to enable candidates, whose degree of seriousness is to be determined by achieving a threshold, to be indemnified for their electoral expenses, not just to get a free gift from the taxpayer. Do you recommend to this committee that we consider recommending in our report to parliament that the act be amended so that there is some accounting requirement for recipients of public funding, so that they have to vouch for the expenditure of the moneys they receive for legitimate electoral purposes?

Prof. Hughes—I would only add to that formula 'an appropriate part of their expenditure'. I think that you will need to have some flexibility there; otherwise, you have the problem of someone who nips out to buy a pack of envelopes at the last minute and that type of thing. But if they are claiming $100,000 they ought to be able to come up with a plausible story for $90,000.

Senator BRANDIS—In other words—leaving aside those marginal issues—it should be a condition of the receipt of public funding for elections by those who achieve the threshold that they can demonstrate that the money has been spent on electoral purposes?

Prof. Hughes—I appreciate the party secretaries will not thank me for it, but I would heartily recommend that to you.

Senator BRANDIS—Thank you.

Senator MASON—Professor Hughes, my colleagues have skilfully teased from you the ramifications of optional preferential voting in state elections and the consequences from that of informal voting in the House of Representatives. Can I ask a question in respect of table 2 in your submission? I cannot think of an explanation for this, but if we look at the Queensland Senate vote and the informal vote we see that it is 2.79 per cent, in Victoria it is much higher at 5.13 per cent, and in New South Wales it is 3.47 per cent. How do you explain that? Is it simply because Queenslanders are more intelligent than Victorians? What is the correlation?

Senator BRANDIS—Coming from Queensland, I thank Senator Mason!

Prof. Hughes—It is a very longstanding phenomenon. I can recall speculation about Queensland's low informal rate half a century ago. The prevailing theory then was that it was the discipline produced by having to stand in the schoolyard in the hot sun before being marched in to start formal education. I am quite serious. It is a longstanding thing.

Senator MASON—It is a significant difference, isn't it? We are not talking about just one per cent; it is 3.1 per cent.

Prof. Hughes—I think the answer is that its origins are lost in the mists of antiquity. It has been there for a very long time. There are, in a sense particularly postwar, phenomena about non-English speakers and things of that sort of which one could look at. For example, there are subtle examinations of the few Queensland divisions that have significant non-English—or not fluent in English—speakers, which I have not attempted. Beyond that, it is also the case that Queensland gets slightly fewer candidates and so on. It is difficult to pin any of these figures down with complete exactitude and say, 'Twenty per cent is attributable to X and 15 per cent is attributable to Y,' as factors for it. All that one can say is that, 'It looks like this, and remedy X is worth trying.'

Mr CIOBO—Is Senator Brandis's jocular comment that perhaps people take Senate elections more seriously in Queensland than they do in Victoria or other places a possible explanation?

Senator MASON—Yes. We have had some celebrity candidates recently, haven't we, Professor?

Mr MELHAM—You don't usually have an upper house—

Prof. Hughes—For example, looking at the Senate voting, there is the question of whether there is a combined coalition team or separate coalition teams. This could conceivably have a measurable influence on rural areas.

Senator MASON—Let us not get into that here!

CHAIR—I have a couple of questions. I thank you for your evidence; I think it has been of great interest to the committee. If there is anything you would like to put in by way of a supplementary submission feel free to do that. My question, which relates to all members of the committee, is about one of the things that you might have read that the committee was looking at—as well as the conduct of the last election—which is other matters relating to our electoral system generally. You have raised optional preferential voting—which has been good—but, given your depth of experience, I wonder whether you could briefly, in light of your arguments about consistency between the state and federal systems, give us your view on four-year terms. This is something that all members of the committee are examining with a view to making some recommendations later in the year.

Prof. Hughes—It is very kind of you and the other members of the committee to provide the invitation. Let us take four-year terms first. I chaired the Queensland Constitutional Review Commission that recommended that Queensland stop being the only state to have three-year terms. I have been a great believer in four-year terms. With the escape clause of the last year—a reasonable escape clause—I think there are obvious attractions. For example, in an earlier generation people like Mr Whitlam used to argue that by having a fixed date like the Americans do everyone knows where they are. I think the American Constitution is so different from the Australian Constitution and other parliamentary systems that the American example does not help us a great deal. What we are really trying to do is to hold the scales more evenly between governments and oppositions. Being able to suddenly pounce on the opposition at short notice—

as the Governor-General's discretion presently allows—is not a desirable feature to build into the Constitution. The committee, of course, will appreciate that we are now talking about constitutional amendment. This is a serious ballgame indeed.

CHAIR—We are well aware of this.

Prof. Hughes—There does seem to be a lot of enthusiasm about for it and I think, despite the heavy cost, it is well worth looking at. The thing is to devise a formula that allows some sort of remedy within the last year of a four-year term. About 20 years ago I can recall there was quite an enthusiastic wave for four-year terms—the ASPG produced symposia and the like. I can recall a serious discussion that I had at one of these meetings with a future Attorney-General about the West Germany revision in which I said that this would allow a government to engineer a vote of no confidence, and he denied that any government in their right mind would ever do such a thing. Since then the Germans have done it three times. So I think that you need to recognise that you are opening the way to having a government try to steal a bit of advantage by doing this. In the case of the present West Germany experience I think it is trying to flee the wrath that is coming by some small distance. This perhaps is not as unworthy a motive as trying to catch the opposition when some terrible disaster has just befallen them, so I would strongly support that.

CHAIR—Thank you very much. That is most useful.

Prof. Hughes—Your invitation was slightly wider than that. There is the perennial subject of the early closing of the rolls, and previous committees have heard me at length of this. On this occasion I will be brief. I will commend to this committee the words of its first committee, which said that it is 'not in the best interests of parliamentary democracy'. I think that it is absolutely right. I would remind members of this committee that there was no dissent recorded to that opinion by the first committee, although Sir John Carrick, who knew a lot about elections and was an honourable man whom I respect, had a number of dissents from the committee report in there; that was an item that he did not dissent on. That is all I really want to say on the subject. I can put forward other arguments but it certainly meshes with the chairman's point about disparity between the electoral systems. It will be highly undesirable to have immediate closure for the Commonwealth and not for any other jurisdiction in Australia.

CHAIR—Although we do in New South Wales.

Prof. Hughes—Not unless you have suddenly done it, as far as I am aware. If the committee looks at the language of the first committee, it will see that they recommended a formula about the Governor proclaiming a week beforehand that the date was coming. Tasmania has brought that in recently in a revised state-of-the-art electoral act. For reasons that I do not know, this was not the procedure that was built in when the 1983 amendments were going through. Had it been done, it would have been preferable to the solution that was put in place.

CHAIR—Thank you very much for that. On the issue of four-year terms and given your experience and knowledge in the field, if you would like to put in some supplementary thoughts on that by way of an additional submission the committee would happily accept that. It will be part of our deliberations—in fact, we will be doing a separate chapter just on the issue. It is up to you but we would appreciate the benefit of your thoughts.

Prof. Hughes—That is very kind of you. Insofar as my thoughts are already committed to paper, would you be content if I sent in a scissors and paste job, saying that I still believe the following?

CHAIR—Absolutely.

Mr DANBY—How long has compulsory preferential voting been the system for the Commonwealth?

Prof. Hughes—It might have been in the thirties. There was a period when the Senate was under a full set of preferences, but I think that the House was always a full set. Have a look in Hughes and Graham, and they will tell you. They are more reliable than my memory now.

Mr MELHAM—Compulsory voting was introduced by a conservative government in the mid-twenties.

Prof. Hughes—Compulsory voting was introduced by or under those auspices in six out of the seven jurisdictions, Western Australia being the only deviant case. I believe it was largely in response to the belief that the trade union movement provided an unfair advantage to one side—not the side that was introducing the legislation. Anybody who believes that now is whistling in the dark. I call the committee's attention to the experience of Ohio at the last election. It is now the case that the evangelical churches can outperform the trade union movement in getting out the vote.

CHAIR—That is for another day at another hearing. I thank you very much for your evidence today. We would be grateful for anything else you would like to forward us.

Prof. Hughes—I am obliged to the committee.

[10.41 am]

MATHERS, Mr Thomas Maxwell, Private capacity

CHAIR—I welcome our next witness. The committee has received your submission. As you would be aware, it has been numbered 143 and has been authorised for publication. Is there anything you would like to correct or amend in your submission?

Mr Mathers—No. As I see it, the submission covers the matters that I wish to raise, and hopefully the committee will take some cognisance of them.

CHAIR—I invite you to make a brief opening statement about the issues in your submission before I invite members to proceed with questions.

Mr Mathers—I am appearing before this committee as a voter in Queensland, having made a submission to my federal member, the member for Petrie, the Hon. Theresa Gambaro MP. For many years since I came back from World War II, I have been involved in political processes and have worked at many election booths in federal, state and local government elections. I have endeavoured to take note of some of the things that have occurred during my time on those booths. Specifically during the last federal campaign in October of last year, there were a number of matters that came to me in my section of the Petrie electorate which I feel need some attention.

Many people of the community these days are in the age group that I find myself in. They are obviously at some disadvantage when it comes to going to polling booths where there are very long queues, as there was in this particular instance. I think something should be done about it. I believe that what has contributed to this factor is that, over the last 10 years in particular, the population of Queensland has increased quite substantially. I think it is by something on the average of over 30,000 a year. In fact, last year's statistics suggest that the number of people that came to Queensland largely from other states as well as from overseas was of the order of 63,000. A lot of those people are coming to Queensland because of the climate. They are settling in retirement type areas in the area where I live. I do not believe that the Electoral Commission have given the thought to that particular situation that they perhaps ought to. When one considers, as I have in my submission, that a number of people of advanced age have had to stand in queues for up to three-quarters of an hour before getting into the polling booth, I think it is something that needs to be addressed in a substantial way so that those people no longer have to endure that situation to cast their vote, which they obviously still want to do.

The other matter that I raised as a result of the current situation impinges on the method of voting for the House of Representatives. When I was scrutineering again during the last election I happened to note that the number of informal votes had increased on the previous election in the area where I was working. I believe that that particular matter has been contributed to by the different systems which apply in both the state and the federal sphere here. The average voter, in my opinion, does not think as deeply about a lot of those things as he or she should. They perhaps vote without giving great depth of thought to the overall situation. Also, where you have different systems involved, they become used to one system and perhaps endeavour to apply that

system subconsciously to the one which they are currently voting in, which may happen to be the wrong system and often in this case contributes to an informal vote.

So I made a submission with regard to the system of voting used in the Senate, which in my opinion is an excellent system, particularly when one looks back and sees some of the systems that were used. For some of the voting papers that we used to have to deal with in the Senate, you were looking at 72 candidates and you had to number them from 1 to 72 to fill in your paper. The system that we currently enjoy is a very good one and is one that could be extended to the House of Representatives.

CHAIR—Thank you very much, Mr Mathers. I might start with a preliminary question on the first part of your submission and your presentation today which relates to the mechanics of voting in your electorate and the difficulties voters face. You quite eloquently pointed out the reasons why this has happened—population growth and the like. It would seem to me that this was all thoroughly predictable for the Electoral Commission. What actions you have seen them taking on the ground in recent elections, and have representations been made to them about what seems to be a fairly obvious and predictable problem?

Mr Mathers—I am currently living in a location where I have been for 11½ years now and I have voted with a number of other people at a particular booth. There are several booths in the area, but because of the growth of retirement type villages et cetera and the greater population density in that area there has been very little done in the way of extending the facilities for voting. Certainly in the last two elections and from an overall point of view I think the Electoral Commission are dragging their feet somewhat.

CHAIR—Have there been any conversations at the local level in the post-election environment with the Electoral Commission staff on the ground? Are you confident that message has got through loud and clear or do you fear it was conveyed but will be forgotten, only to be repeated next time?

Mr Mathers—I cannot answer that, because I personally have not been involved in any conversations with electoral staff with regard to that matter other than on election day itself, when I made the comment that there were not sufficient people there to deal with the number of electors that were voting at that particular booth. That booth is a dual booth—

CHAIR—With the electorate of Lilley?

Mr Mathers—with Lilley—and there were only two poll clerks for each electorate. For that reason, obviously, people had to wait in a queue to be able to vote.

Senator BRANDIS—Mr Mathers, thank you for that submission. You deal with the issue I asked Professor Hughes about—that is, whether or not the Senate voting system could be also adopted for the House of Representatives. In your submission you recommend that that be done. Do you envisage, just like on a Senate ballot paper, that a House of Representatives ballot paper would give people the option of either following the party ticket or filling out their own individual preferences below the line?

Mr Mathers—Yes, I do. I feel that at this stage the electors have a choice: they can either fill in the whole ballot paper—from No. 1 to No. 41, or whatever it might be—or use the system of putting '1' in a square, and that covers the situation. Using the Senate system would get away from the difference in systems that is currently imposed on electors, in general terms, in this state.

Senator BRANDIS—Mr Mathers, we have known each other for a very long time and I know that you have—

Mr MELHAM—That is a declaration, is it?

Senator BRANDIS—It is. Mr Mathers, I know that you have worked on polling booths for many years on behalf of the Liberal Party. Is it your impression that since the introduction of optional preferential voting at state elections and the recommendation by one side of politics—the Labor side—to 'Just vote 1' there has been a greater degree of confusion and consequent informality in elections for the House of Representatives, where as we know there is not optional voting?

Mr Mathers—Yes, in my opinion there has been, particularly amongst the older members of the community. I spend a lot of time during election campaigns chasing up applications for postal votes and things of that nature with people who cannot go to a polling booth. It appears there is a great deal of confusion in the community with regard to the system when the ballot tickets come back, even amongst those people who have applied for and are using the postal voting system.

Senator BRANDIS—On the basis of your own experience and from the anecdotal evidence you have become aware of in the course of that experience, do you think that the introduction of the strategy of encouraging people to only vote '1' in state elections has been the principal cause of that confusion in House of Representatives elections?

Mr Mathers—I do. I feel that it has been a method of confusion, and it may well have been designed in that respect. But specifically it is because the system is different from that of other situations that you find that people have become confused. In particular, if you look at people, say, from Victoria, where they follow the firm preferential system right through, who then come to Queensland, where they do not have that system, they do certainly become confused and do not understand the reason for the differences. That is why, in my opinion, we had quite an increase in informal votes in the last federal election.

Senator MASON—Following on from Senator Brandis's question, do you prefer optional preferential voting in the House of Representatives, or would you prefer ticket voting?

Mr Mathers—In my experience, having been brought up in the ticket-voting system, and specifically having been born and bred in Victoria, I am used to the preferential system applied right through. I believe that in the interests of the community that is the best way in which voting should be conducted.

Senator MASON—To clarify that: we are all concerned about minimising the amount of informal votes for the House of Representatives, and there is a correlation with the state

system—because it is different people get confused, as you have outlined. If we were to adopt the idea that Senator Brandis has raised of using the Senate system in the House of Representatives, do you think that would be a better way to minimise informal voting than simply using optional preferential?

Mr Mathers—I do, because that would tie the two systems together as one and people would become used to that.

Mr MELHAM—Mr Mathers, the fundamental difference in the lower house, however, is that you do not have groups of candidates running, like you do in the Senate. How do you propose to have a ticket system in the House of Representatives similar to that of the Senate? Do you propose to split the ballot paper down the middle, giving people the option of putting '1' in a box on the left-hand side or numbering every square?

Mr Mathers—No, specifically—

Mr MELHAM—Frankly, what you will have is ballot papers that are, again, inconsistent between the Senate and the House of Representatives.

Mr Mathers—Most candidates would have a ticket that they would want their supporters to follow. There are odd candidates who do not.

Mr MELHAM—I understand that. What I am asking is: how would you lay out a House of Representatives ballot paper to allow for ticket voting and full preferential voting? What would you do? Would you split it up the middle?

Mr Mathers—Whether you have it straight up the middle or across the top, it is a matter of the easiest and most efficient way in which that should be done. But the same principle can be applied as is applied in the Senate.

Mr MELHAM—But do you understand the point that I am making to you? Let us say that, if you follow the Senate system and have a similar ballot paper, you have a ticket-voting system with candidates going from east to west. If you want to do a ticket vote, you have to go from north to south. If you want to do a full preferential, that could create some problems.

Mr Mathers—I think the ticket for the House of Representatives should follow the same method and the same layout as the Senate ticket.

Mr MELHAM—So in landscape form?

Mr Mathers—Yes.

Mr MELHAM—It is fair to say that the there was a real problem in terms of queuing in the 1990 federal election, which was the first election I contested, and that was put down to the Electoral Commission wrongly allocating people within polling booths as far as issuing points go. A lot of that was overcome in subsequent years by the Electoral Commission doing proper assessments of polling places. It seems to me that the problem in the dual booth you have is that a proper assessment has not been done on the growth of that booth and its dual nature.

Mr Mathers—It is not only in that one particular booth but in a number of booths in that area. I have been talking about the booth that I actually spent some time in. Since discussing that with other people, I have learnt that they have had similar situations and they need to, in my opinion, address that.

Mr MELHAM—I am not dismissing that. When did you come to Queensland from Victoria?

Mr Mathers—In 1957.

Mr MELHAM—To your knowledge, was there any attempt in that time of conservative government for a change in the voting system to a full preferential system, as against the optional preferential system?

Mr Mathers—Not in my memory.

Mr MELHAM—In effect, soliciting a vote, just voting No. 1, is not illegal in the Queensland system, is it?

Mr Mathers—No. I am not talking about illegality; I am talking about becoming used to the same system.

Senator BRANDIS—I do not think that it has ever been tested in the court, so we do not know whether or not it is illegal.

Mr MELHAM—The point I make to you, Mr Mathers, is that the Langer felicitation was in contravention of provisions of the then Electoral Act that outlawed advertising that particular method of voting. There is no such provision in the Queensland laws that outlaws soliciting just voting for one candidate, which is consistent with the voting system. That is all I am saying. It could be overcome by a provision introduced into the act that would discourage people from soliciting such a vote, if it went through parliament. Could that not be done easily, if both sides supported it?

Mr Mathers—I would think so, yes.

CHAIR—Mr Mathers, thank you very much for your evidence, for taking the time to come along and for your submission. You have raised two important issues, and we will certainly be taking those into consideration. They are very much topical with the other hearings we are having around the country. Thank you once again.

Proceedings suspended from 10.59 am to 11.15 am

QUIGGIN, Professor John Charles, Private capacity

CHAIR—Welcome. Professor Quiggin, in what capacity do you appear before the committee today?

Prof. Quiggin—I am appearing primarily in my capacity as the publisher and author of a weblog, johnquiggin.com.

CHAIR—The committee has received your submission. It is a public document, numbered 44, and it has been authorised for publication. Is there anything you would like to correct or amend in any way in your submission?

Prof. Quiggin—I would like to add a couple of brief points. The burden of the submission is the issue of how internet publications should be regulated under the Electoral Act. My submission is that they should be treated like magazines—that comments should be treated like letters to the editor and therefore, for the requirements of authorisation, the Electoral Act should be interpreted narrowly to apply only to what are obviously presented as advertisements. Two points have arisen since I made the submission.

CHAIR—Before we get to that, I will ask you to make a brief opening statement where you can address all the issues in your submission. Just to clarify: on reflection, is there anything you wish to amend, delete or correct in any way in your submission?

Prof. Quiggin—No.

CHAIR—I ask that of every witness. That not being the case, I invite you to make an opening statement to cover all the issues in your submission and anything you think has arisen in the time since you made it.

Prof. Quiggin—As I have mentioned, the basic point of the submission is fairly straightforward in terms of how requirements for identification should apply to internet publication. My submission is that they should apply only to what would normally be recognised as discrete advertisements. There are two additional points that I wish to raise. One is the general point that issues of this kind are being dealt with by jurisdictions around the world. The FTC in the United States is raising issues. They are different issues, because there are different laws, but the general problem is clearly one that is going to need to be addressed in a range of contexts.

The second point I want to add is that many, though not all, of the publications I am talking about contain a mixture of personal observations of various kinds and political comment, and the desire for anonymity is most common because of the personal content. There are things about what is going on at your workplace and so forth, so a requirement for identification of the authorship would be very burdensome and would very much impinge on the development of what I think is an important new medium across a range of contexts and an important source of technical innovation that is going to benefit the Australian economy.

Mr DANBY—Let me make sure I understand this correctly. You are saying that even at the time of elections comments posted on a blog or a weblog should not be subject to the electoral law. Currently, during election periods, if you write a letter to the editor of the *Courier-Mail* or any newspaper around Australia, you have to disclose your address. Are you suggesting that people could post anonymous comments and not put their address on a blog?

Prof. Quiggin—My understanding is that the requirements have been changed in important respects—in particular, callers to talkback radio were at one time required to identify themselves but they no longer need to do so. It was my impression that that had also been extended to writers of letters to newspapers, and I am not quite clear exactly what the current position is. It is certainly my view in general that the preferred position ought to be that all people in that category should be free to write without the provision of address details.

Mr DANBY—You are not suggesting that people who post things on weblogs or on the internet generally not be subject to the laws of defamation or the laws of the land et cetera?

Prof. Quiggin—Absolutely not. One of the justifications presented here is that people might publish anonymous defamatory material. Obviously, if I were going to publish something I knew to be defamatory, I would seek anonymity. In that case, I would be relying on undetectability, not on the fact that I was not breaching a provision of the Electoral Act. I would point out that the problem of anonymous defamation on the internet is far more serious outside the political sphere. After all, you can say a fair bit under decisions of the High Court in a political context that would be defamatory in other contexts. To have a special electoral provision directed at anonymous defamation seems anomalous to me.

Mr DANBY—Are there any implications of the case of the suit that Mr Gutnick had in Melbourne against Barrons that was ultimately successful in questioning an item here in Australia that I think Barrons claimed was posted in the United States?

Prof. Quiggin—There certainly are implications from the fact that the location of publication is much more indefinite in the case of internet articles. If there are questions of what sort of jurisdiction could be sought, it is not clear that that premise is always going to be satisfied. It may well be, for example, my site is technically published by a server based in the United States. It is possible that, should an action be brought against me, I would be able to use that as a defence, although I am not a lawyer and this appears to be still an unsettled question. But certainly I think the practical considerations add force to the view that we should not be seeking to expand the scope of the law into areas where it is going to be very difficult to apply even if we sought to.

Mr CIOBO—Just to clarify the comments you have been making, am I correct in my interpretation that what you are saying is that, with respect to potentially defamatory comment that is posted anonymously, it is largely superfluous for there to be a prohibition contained in the Electoral Act? Is that essentially your contention?

Prof. Quiggin—That is exactly right. To the extent that the author can be discovered—and that will not necessarily be the case—the obvious procedure is for a defamation action to be brought. Again, although I am not a lawyer, I would imagine that the anonymous nature of the publication would be an exacerbating circumstance.

Mr CIOBO—But, with respect to material that may potentially be defamatory or blatant in terms of its mistruths or clearly misleading and deceiving and that is attributed or attributable, I take it that you would not have a problem with that potentially being a breach of the Electoral Act?

Prof. Quiggin—I think the problem here is that there is not any general restriction on publishing misleading or false information on political issues. For example, the editorial columns and opinion columns of newspapers typically claim a name but not an address. If in my financial review column, for example, I write something that somebody regards as false and deceptive, there is no recourse really but to write a letter.

Mr CIOBO—But there is, though—

Senator BRANDIS—There is section 329 of the act, which specifically prohibits misleading or deceptive material. That has been narrowly read down by the High Court in Evans v Crichton-Browne. Your statement that there is no prohibition on misleading or untruthful electoral material is incorrect.

Prof. Quiggin—I accept that. There are very limited effective restrictions—that would be a more accurate statement of the case.

Mr CIOBO—But, in terms of a more broad comment with respect to defamation, likewise, there are also remedies available as well as, of course, the fact that the publisher risks exposing themselves to liability potentially as well by virtue of the fact that they publish the material. I guess the difference when it comes to the internet is that it is possible for someone to publish something to a large audience at minimal cost of their own volition. What I am trying to ascertain is whether you have any problem with that being a breach of the Electoral Act.

Prof. Quiggin—I have no problem with the general provision, just as, for example, a caller to talkback radio could be held liable for defamation, certainly, and for misleading statements to the extent that that is effective. I think that is an analogous case where at very low cost you can reach an audience substantially larger than the average web site.

Mr DANBY—Talkback hosts have a button which they can press if people pursue defamatory material.

Prof. Quiggin—That is true, and it is in their own interests for them to do so.

Mr CIOBO—Fundamentally, though, with the internet you also have the problem of the address itself often containing qualitative commentary—for example, johnhowardlies.com and titles like that. What is your view of the ability to register domain addresses such as that?

Prof. Quiggin—There are some limits on what kind of domain addresses you can register, but they are very limited. The international nature of the internet makes it relatively difficult to restrict these things in an effective fashion—a dot com site is essentially in the US part of the domain, unlike a dot com.au site. So, although it might be possible for Australia to restrict johnhowardlies.com.au, it would quite difficult to restrict johnhowardlies.com.

Mr CIOBO—Do you have a view about whether or not it should be possible for a domain address to fall under the auspices of the Electoral Act and for it to be actionable?

Prof. Quiggin—I do not have a view regarding domain addresses. I doubt that there could be sufficient content in a domain address to—

Mr CIOBO—Sure, that is a slightly separate issue.

Prof. Quiggin—Yes.

Mr MELHAM—In your submission you state:

...although the law formerly required identification from writers of 'Letters to the Editor' and callers to talkback radio programs, this requirement was repealed in 2001.

Can you provide us with some more information on that?

Prof. Quiggin—I must admit I cannot. That was my reading of the provisions when I made the submission, but I will attempt to follow that up.

Mr MELHAM—I am interested as to whether you can point us to a reference in relation to that.

Prof. Quiggin—I will attempt to provide a reference on that.

Mr MELHAM—Your submission states:

The AEC defends Section 328 as 'ensuring that anonymity does not become a protective shield for irresponsible or defamatory statements.' However, the basis for this claim seems weak.

I must confess I am not with you on that. I actually support the Electoral Commission's view that anonymity should not be a protective shield. Why shouldn't people put their name forward if they want to have a go at us in an election period? We should have the protection that, if they overstep the mark, we can go them. It can actually affect an election result. The problem we have is with a defined election period where damage can be done to candidates if people are anonymously able to throw dirt at them.

Prof. Quiggin—I think the issue is really one of prior restraint versus ex post remedies.

Mr MELHAM—I accept that, which is—

Prof. Quiggin—It seems to me a requirement that all comment be from an identified source is effectively a form of prior restraint. There is nothing stopping you—

Mr MELHAM—I am asking: why isn't that good public policy?

Prof. Quiggin—Because I think there are good reasons why members of the general public commenting on electoral matters seek to be anonymous. I would find it very annoying if, for example, I said something in a telephone conversation or at my local pub about politics during the election period and somebody could require me to give my name and address.

Mr MELHAM—But if you are going to go on a television or radio program or write a letter to a newspaper and you want to participate in the debate, why shouldn't people have a right to know who you are? You might be a member of a political party, so it is not necessarily an independent view. I have been attacked on more than one occasion, which comes into the category of fair comment because there is broad latitude for political comment, but the background against that is the name and address is supplied and people are able to identify the person. I recently had the One Nation candidate attack me in my local paper. It is not an election period, but in fairness to him he gave his name and address and was prepared to identify himself.

Prof. Quiggin—In relation to fair comment, a reasonable response which is routinely made is: why should we pay any attention to the views of somebody who is not prepared to sign their name—if it is fair comment?

Mr MELHAM—What I am saying is that it could be very damaging. In an election period, where remedies are limited, why shouldn't there be a requirement, if people want to enter the fray, for disclosure? I don't like assassins on the grassy knoll. I would rather know who shot me. Then I can make a subsequent attempt to remedy or go the person if they have overstepped the boundary.

Prof. Quiggin—I think, against that, you weigh the fact that a large fear of legitimate comment is precluded, especially in the context of continuing publications. Most of the publications I am concerned with are typically continuing publications.

Mr MELHAM—Why is it precluded? Are they too gutless to put their name to it?

Prof. Quiggin—Many of these publications, for example, include personal details about the author. There are many reasons people wish to be anonymous—a great many reasons—that have nothing to do with the political content of the site.

Mr MELHAM—I understand that.

Prof. Quiggin—It would certainly be a major burden—

Mr MELHAM—But, if they are seeking to enter the fray and to influence an outcome, why shouldn't they put their name to it so that, if they overstep the mark, remedies can be had against them or, in fairness, the quality of their comments can be assessed? Anonymity can still be very damaging, but it also gives the recipient of that advice an opportunity for a comeback. In my instance, for example, I felt that there was no necessity for a comeback because the candidate, in fairness to him, declared who he was and his political party and that spoke for itself. So it was not an independent attack; it was a political opponent.

Prof. Quiggin—To come back to what I was saying, we have a situation where there is a continuing publication. Obviously, once you are identified, you are permanently identified, so

the effect is, in the context of any publication where authors or regular participants have entirely legitimate reasons for maintaining anonymity, that they are required to exclude themselves from political comment during an election campaign.

Mr MELHAM—Isn't that an on-balance call? It is a question of public policy.

Prof. Quiggin—I agree; it is a question of public policy.

Mr MELHAM—I am saying: what about the recipients? What about us as candidates being anonymously attacked in a campaign period that could affect the outcome of votes?

Prof. Quiggin—I think we can look at two parts of the attack. One is the substance of what is being said and whether the authorship is within the bounds of fair comment and not defamatory. The authorship does not matter to the substance of the comment but, if the author claims expertise of some kind, that is clearly undermined by an anonymous publication. So, for example, if someone on my weblog wrote and said you were the worst candidate who had ever run for the Labor Party, there is nothing stopping you responding. The only thing you do not have is an ability to say, 'The reason they're saying that is because they are one of my political opponents.' But I would say that, most of the time, that is fairly obvious.

Mr MELHAM—At the last election, the Liberal Party produced a sheet that attacked me for some comments I made in 1996. But, in fairness to them, it was authorised and there was a name and address attached to it. Whilst ancient, I regarded the fact that it was authorised and the name attached to it as a lot fairer comment than if it were an anonymous sheet—admittedly the authoriser did not identify him as a member of the Liberal Party or as a campaign director of the state Liberal Party.

Prof. Quiggin—The point I make in my submission is that typically the authorisation requirement in these cases puts very little personal burden on the person concerned, as long as they stay within the law. There is going to be—

Mr MELHAM—Correct. And what I am saying to you is: isn't that the real test?

Prof. Quiggin—Let me continue. If I am a paid official of a political party, the fact that I make an attack on the other political party which they regard as grossly unfair is unlikely to do me any personal damage. In that case you know perfectly well that your employer is going to be happy with what you have done. For a typical member of the public that is not true at all. They are in a position of substantially greater exposure if they make comments that people may resent. I think the effect of the restriction, as it has been, is very much limited as regards political parties. The requirement for personal authorisation does not really have much of an impact.

Employees of so-called astroturf lobby groups of various kinds again face no real adverse personal consequences for identifying themselves. It is up to the recipient to challenge the independence or otherwise of the group that they are representing. My view is that these restrictions as you apply them to ordinary members of the public are crimping of debate. The more we expand the kinds of areas where the state restricts things and the less we regard these as a continuation of what is clearly legitimate in ordinary speech, the worse it will be.

Mr MELHAM—I am interested in latitude for political comment. But, by allowing anonymity and being a lot more restrictive along the lines you suggest, you leave a campaign period open to attacks on candidates that in my view could influence outcomes. Frankly, from a public policy point of view, on an on-balance call, I am just not with you on it. I understand where you are coming from, but I think that if we go down your path we will allow open slather. The Liberal Party and the Labor Party, for instance, could use a whole series of fronts. They still can anyway, I suppose.

Prof. Quiggin—That was what I was saying.

Mr MELHAM—But at least you have an individual that you can come back to or you can trace. I was able to trace, because of the authorisation, that the sheet that was put out on me was linked to the Liberal Party. I think that was a good thing. In the end, I have not done anything about it. When the Liberal Party comes before this committee I will have something to say. But at least as the recipient, because authorisation was required—and in fairness to the Liberal Party they did comply with the law—I was able to trace it. So it was not as anonymous as it would otherwise have been. Without authorisation, without a requirement for a name, I would not know where this stuff came from. I am just using that as an example.

Prof. Quiggin—I would make the point, though, that a far more serious problem is that the professional employees of supposedly independent groups suffer no comeback from the identification. If I am a paid employee of citizens for a fairer Australia, which publishes violent attacks against the Labor Party—

CHAIR—We will keep moving along. There is a difference there.

Senator BRANDIS—I wanted to follow from where Mr Melham was going and come back to an observation that was made before about fair comment. Isn't the whole point that in a liberal democracy during elections people are allowed to make unfair comments but the quid pro quo is, if they make comments, fair or unfair, they should take responsibility for them?

Prof. Quiggin—As I point out, there is a large domain of activity where that is not applied. Obviously it is not applied to private speeches and—I will check on this—it is not, as far as I know, applied to callers to talkback radio. So the question really is: where should the lines be drawn? Should they be drawn broadly or narrowly?

Senator BRANDIS—Ultimately, if the touchstone is freedom of speech, I am at a little bit of a loss to see why it is a burden on or a compromise of freedom of speech to require the speaker to take responsibility for what they say. It does not impose any limitation on what they might say for their identity to be known, does it?

Prof. Quiggin—An almost identical argument was used in the 19th century to oppose secret ballots. It was argued that, if you want to participate in democracy, you should not be afraid to stand up publicly and declare your vote for the candidate of your choice.

Senator BRANDIS—There is a difference in principle between expressing your preference in your ballot, which is arguably a private matter, and saying something about another person which by definition cannot be a private matter because it affects another person.

Prof. Quiggin—Obviously your vote affects the candidates in precisely the way they are most concerned about. Furthermore, these restrictions do not apply merely to personal criticisms of individuals. They are very broadly drawn. Once you are in this net, you cannot say anything about any matter which is before the public.

Senator BRANDIS—Why is it a restraint on freedom of speech for the speaker to take responsibility for that which they say?

Prof. Quiggin—If you took that view, you would argue that that point should be applied across the board. I am making the point that—

Senator BRANDIS—I am asking you to answer that question, not to draw comparisons or historical references. Why, in principle, is it a restriction on freedom of speech to require the speaker to take responsibility for that which they say?

Prof. Quiggin—Because, in general terms, ordinary people are subject to a variety of potential adverse consequences from expressing their opinions which, on many occasions and on many topics, lead them to wish to express them without identifying themselves. The general rule is that they are quite free to do so. I can publish my opinions on all manner of things without identifying my name and address. That is the general rule and it is there for very good reasons. The issue is whether we should have a special rule applying particularly to electoral comment.

Senator MASON—I will be very brief. Professor Quiggin, how do you operate your site? If someone sent a plainly scurrilous contribution to your site about a member of parliament, the Prime Minister or a political party would you publish it?

Prof. Quiggin—The way the site works is that unless the software stops it, it appears. I normally attempt to delete comments which contain obscene language or which I regard as clearly defamatory.

Senator MASON—So you censor certain material?

Prof. Quiggin—I censor certain material. That is my policy, yes.

Senator MASON—Mr Melham touched on the observation that as the internet grows in its coverage not only can the individuals that are affected be potentially defamed but also national or electoral outcomes can be affected by a particularly nasty lie—for example, something scurrilous about the Prime Minister or whatever that is published just before an election and there is no time to rebut it.

Mr DANBY—Or someone in a marginal seat, but the marginal seat decides the election.

Senator MASON—Indeed. So it is not just a matter of defaming individuals; it is potentially changing the outcome of national history. That is why we are very sensitive to the issue.

Prof. Quiggin—I accept the sensitivity. I merely make the point that should the Liberal Party wish to do this, they can and there is effectively no significant constraint on doing so. Should a front group with paid employees do it, again, they can and the requirement of personal

identification does not impose any personal costs. To the extent that the requirement is burdensome, it is burdensome primarily on ordinary members of the public who do not have the protection of an organisation backing them up.

Mr DANBY—Professor Quiggin, why do you say that the Liberal Party can do this with no implications? For instance, if the attack on Mr Melham by the Liberal Party was found to be defamatory, it was a good deal worse and he decided to take it up, he could. He would have the protections of both the electoral law and the laws of defamation. I do not follow your point that individuals are in a completely different situation to entities like the Liberal Party.

Prof. Quiggin—To clarify, I referred to comment that is legal but is irresponsible and is not covered by either a section of the electoral act or the defamation act. Obviously, as I have said about defamation several times, anonymity does not protect you from a defamation action. The only impact of the electoral law in this context is that you have breached a section of the criminal law as well as the civil law. To the extent that you publish something that is defamatory, I would have thought that the requirements of the electoral act are superfluous and the correct remedy is under defamation law.

Mr DANBY—I also do not understand why you exercise responsibility as a publisher of a web log, but you are theoretically against it. As I understand it, say in a non-election period, many people post anonymous comments on web sites or use a nom de plume—I suppose in election times it would be a nom de guerre. The host of the web log could surely, during an election period, ask these people for their email address or address and then, having exercised that responsibility, post it on the site, at the same time not necessarily revealing their name or their position—people using Fat Boy, Thin Boy, Big Boy or Slim Boy as their nom de plume or nom de guerre.

Prof. Quiggin—I suppose there are two issues. One is—and I must admit I am not clear on this—whether advising me of the details clears somebody under the electoral act. I do not know that the fact that I know who the person is is sufficient revelation under the electoral act to protect people.

Mr DANBY—It might protect you.

Prof. Quiggin—I am not quite clear whether, if I were otherwise in breach of the act, the fact that I knew who the commenter was would cover me. But the second point is that among the reasons for anonymity is indeed that people do not want me to know who they are. If I can speak to the practicalities that lead me to motivate this, were it true that internet comments were required to have the authorship identified, my only really feasible response would be to close down the comments section during election campaigns or to require large groups of people who regularly comment not to do so because almost anything they say in this period could be not necessarily material—

Mr DANBY—Or to do what newspapers have done in the past—that is, to let people publish under a nom de plume, have their address and protect their anonymity by allowing that nom de plume to be used but, at the same time, to exercise their responsibility by having their address and knowing that they are a real person. The person is willing to be identified, anyhow.

Prof. Quiggin—That does not seem to address the concerns that Mr Melham raised. The fact that I know who the person is does not help, and of course there is no easy way. Most publishers of these things do not have any resources to verify any of this. I certainly do not have the resources, for example, that a newspaper commonly does to ring the person back and check that there is a real person at the other end of the phone line or anything like that.

But I do not exactly see how this addresses the kinds of concerns that I raised. It is an issue more generally, I suppose, in relation to defamation as to whether it would be sensible for me to get these sorts of things in order so that, should somebody raise a defamation action, I would have that protection. But it does not seem to me in the specific context of the electoral act that requiring commenters to register with a real name—or an allegedly real name—would really help my problems. Certainly, if I were required to have a verified name and address, I would have no option but simply to refuse to take comments during an election period.

CHAIR—Thank you very much for your submission, for your evidence today and for taking the time to appear before us.

Prof. Quiggin—Thank you.

[11.48 am]

QUILL, Mr John Sidney James, Committee member, Association of Australian Christadelphian Ecclesias Inc.

CHAIR—Welcome. The committee has received your submission. It has been numbered 27 and been authorised for publication. Is there anything you would like to correct or amend in the submission in any way?

Mr Quill—I would just like it to be noted that I am no longer the secretary of that organisation. I did not seek reappointment to that position earlier this year but, as I said, I am still a committee member.

CHAIR—Sometimes it is hard to leave that office.

Mr Quill—Yes.

CHAIR—Would you like to make a brief opening statement, as you have seen the other witnesses do, summarising your submission before we open the hearing to some questions?

Mr Quill—I thought it might be useful if I gave just a very brief overview of the organisational structure of Christadelphia, because I think that might assist the committee in understanding how we go about declining to vote in political elections. The Christadelphian community is made up of independent churches and they are bound together by a common understanding of basic teachings of the Bible and by a range of agreed behaviours. One of these behaviours is not taking part in political elections. Each church manages its own affairs largely independently of other Christadelphian churches and positions are filled on an entirely voluntary basis, usually by election, and it involves all church members. There is no paid church ministry.

The Association of Australian Christadelphian Ecclesias, the organisation that made this submission to this inquiry, represents about 92 churches from all states and territories. It was established to provide a focus for discussion and cooperation relating to the organisation and the spiritual and pastoral needs of Australian Christadelphian Ecclesias in areas of mutual benefit.

Christadelphians have a longstanding conscientious objection to participating in political elections and referenda. The first documentary evidence of that that I can find comes from 1873, in a magazine called the *Christadelphian*, published in the United Kingdom. There was an article in answer to a question from a Christadelphian living in the United States about voting in a political election. In his answer to that person, the then editor of the magazine made it very clear that, in his view, a person professing to be a disciple of Christ should not be involved in voting in political elections.

By the late 1800s, there were Christadelphian communities in South Australia, Victoria, New South Wales and Queensland. The first documentary evidence that I have from Australia of Christadelphians having a formulated view on participating in political matters is from 1915, in a Christadelphian magazine called the *Shield*, published in Adelaide. That article refers to the

introduction of compulsory voting in Queensland. Also from 1915, I have a letter from a Christadelphian to the electoral registrar seeking exemption from voting in the conscription referendum and setting out his reasons for doing so.

In October 1924, a Christadelphian church sent a letter to members following changes to the Commonwealth Electoral Act which introduced compulsory voting in Australia. The letter stated reasons for not voting and suggested a form of words that could be useful should a Christadelphian choose to use them in responding to an inquiry as to why they did not vote in an election. Finally, the Christadelphian Statement of Faith states that we should not be involved in politics.

Every two years, the Christadelphian community holds a meeting of representatives of Christadelphian churches throughout Australia where, among other matters, relations with the government are discussed and where motions relating to military service, jury service and voting in political elections and referenda are put to the meeting. This is now done largely to maintain the historic nature of the Christadelphian position on these matters. These motions are invariably passed unanimously. The wording of the motion related to voting reads:

That this Australian Christadelphian conference—

and the reference is there in that motion to the particular location of the conference and to the year—

reaffirms the Christadelphian objection to participating in politics and voting in political and local government elections and referenda on the grounds of their religious convictions.

A copy of this motion is sent by the chairman of that conference to the Australian Electoral Commission and to appropriate state and territory offices. The Australian Electoral Commission invariably responds, referring to section 245 of the Commonwealth Electoral Act, in particular to section 245(14), which refers to the need for a non-voter to advise the divisional returning officer that his or her religious duties require them to abstain from voting and that this would constitute a valid and sufficient reason for not voting.

I am aware of only one occasion when a person had some difficulty with this. That was in a state election; it was not in a federal election. When I received information from that particular person, it transpired that they had not responded in the time allowed. We did make representations on that person's behalf, and the reasons for their not voting were accepted. As I said in the submission, the Christadelphian community is very appreciative that legislation permits us to exercise our conscience in this matter and for the very courteous fashion in which we are treated by officers of the Electoral Commission.

CHAIR—Thank you very much.

Mr MELHAM—I suppose then, Mr Quill, the commission and the act have got the balance right in your view, haven't they?

Mr Quill—In our view they do, yes.

Mr MELHAM—You are not suggesting any further amendments to the act?

Mr Quill—No, we are not.

Mr MELHAM—In effect your congregation is covered under section 245(14).

Mr Quill—We certainly are, yes.

CHAIR—I have one question. I appreciate your evidence and the fact that you think the balance is pretty right. The only issue I have is that you do state in your submission, if I am correct, that the process works as follows: after each election many of your members receive a letter from the AEC and they are dealt with courteously and appropriately. You are 100 per cent satisfied with that approach?

Mr Quill—Yes, we are.

CHAIR—You would not seek any registration beforehand that would avoid that?

Mr Quill—We are not seeking that, no. We appreciate the opportunity to express our conscientious objection and we would see that in a somewhat wider context. We would see that in the context also of our objection to participation in military service. You may or may not be aware that Christadelphians have a very longstanding position on that and have been prepared where necessary to go to prison to further that particular stand.

Senator BRANDIS—I note your observation that section 245(14) of the Commonwealth Electoral Act does meet your requirements and those of your coreligionists. Would you go on to say, though, that you would find it even more suitable to those who have your beliefs not to be burdened by the obligation to make a declaration under section 245(14) by the Commonwealth simply introducing voluntary voting?

Mr Quill—No, I am not saying that at all. Our organisation does not have a view on whether voting should be compulsory or voluntary. We accept the system as it stands and we are more than happy to respond to inquiries as to why we have appeared not to vote.

Senator BRANDIS—You do not have a view to express about that but you do say that in a functional way section 245(14) meets your requirements and those of your coreligionists.

Mr Quill—Very well indeed, thank you.

CHAIR—Thank you very much for appearing today and for your submission. It is useful for our deliberations. All of us as members of parliament are aware of these important issues. Without any hint of condescension to my Senate colleagues, those of us in the lower house are perhaps a little more aware of the rights you correctly have.

Mr Quill—Thank you for the opportunity to appear before the committee.

[11.59 am]

GUNTER, Mr Richard Stephen, Private capacity

SKYRING, Mr Alan George, Private capacity

CHAIR—I am aware that you have made submissions but the committee did not seek to hear you as witnesses at our public hearing today. Nevertheless, I am told that you are seeking to appear so I have asked you to come forward. As a courtesy I will repeat the opening statement I made at the beginning of this hearing, as you may not have been present then.

The committee has received 165 submissions to the inquiry. Many of these have been detailed, well written and self-explanatory. Accordingly, the committee does not need to hear from every person who made a submission. The submissions have raised numerous issues which the committee is considering carefully. While examining the submissions the committee has identified a number of issues that it wishes to take to a further level and seek further evidence on.

I would remind you before I go any further that, although the committee does not require you to give evidence under oath, this hearing is a legal proceeding of parliament and warrants the same respect as proceedings in the house itself. The giving of false or misleading evidence is a serious matter which may be regarded as a contempt of parliament. The evidence given today will be recorded and covered by parliamentary privilege. As I said at the outset and I would like to reiterate, every member of the public has a right to make a submission. We advertise widely and, as I said, we have received 165 submissions to date and will receive more submissions—sometimes follow-up submissions from members of the public. You have made quite detailed submissions, Nos 71 and 72. They have been received by the committee. That is your right as members of the public to do that.

However, I would point out to you as a courtesy that you cannot of your own determination insist that your submission warrants your appearance before a committee such as this. That decision is one for this committee based on the committee's view as to whether it can seek further information of interest to it. It is simply not possible for us to hear from every single person who makes a submission. The fact that we do not hear from some people who make submissions does not lessen the fact that the committee will consider all of the submissions. As I have said, we had determined the hearing list today based on our view of the additional evidence we wanted to receive. You were not on that list. You cannot seek to be on that list yourselves because in your view you think you want to appear here. It is determined by the committee's view of the additional evidence we want, not your view on whether you would like to have a public forum. Notwithstanding that, out of courtesy of the fact that you have turned up and we are running ahead of schedule, I am prepared to make available time for you to speak to your submission and we will do that for a brief period of 10 minutes or so. If there are any questions, they will be directed to you. I offer you that courtesy. I welcome you to today's hearing. The committee has received your submissions as I have said. No. 71 is Mr Skyring's submission and No. 72 is Mr Gunter's submission. Do you have any corrections or amendments you would like to make to your submissions?

Mr Gunter—No.

Mr Skyring—No.

CHAIR—I invite you to make a brief opening statement of perhaps a few minutes each.

Mr Gunter—I think I should start the proceedings by pointing out the fact that I followed the way the act and the law was laid down. Parliament puts out acts saying that we have to compulsorily vote. There are due procedural steps that one has to follow when one does all these things; however, in my situation I have challenged two elections on the validity of how the actual election was formatted in its first instance. On reading the act, it states that certain steps have to be followed. If the steps are not following the way the act has stated then, obviously, there is a question of the legality of the whole or part of the election. I went to the degree of putting in electoral petitions. One went to the High Court and was sent back to the Federal Court. It ended up before Justice Cooper, I think it was, and he said, 'I don't think I've got the jurisdiction to hear the case.' It had to go back to the High Court. Nothing was done.

My next petition had a number put on it. It was published in a government *Gazette*. It was served on the people concerned. I put an affidavit in saying it had been submitted and then I got told: 'They're not going to run the case. They're not going to do a thing about it.' This raises the question: what happens if you cannot come into a court? I know there is a separation of power; that is not the problem. The public has to be able to come in and voice a concern about a system defect. Whether or not it is trivial does not make any difference. You gentlemen are going on about the numbering of your papers and identifying people when they make anonymous comments and things like that, but when you legitimately challenge the thing through due process, and due process itself—and I am talking about the High Court—will not even allow you to come into the court, then it raises the question of the legality of democracy itself.

If I am not entitled to challenge the validity of an election, or part thereof, then no law can be applicable to me as an individual, which is not the way the Constitution reads. The Constitution reads quite clearly that the courts and the judges and every person in every state and in every territory must abide by the law. You gentlemen sit in parliament and make these laws. If these laws are not being followed the way they are written, to the letter of the law, then why are you gentlemen spending taxpayers' money creating these laws if they are not going to be upheld and you cannot challenge them?

I have got to the stage now where I have put on my paperwork a qui tam—an action on behalf of the Queen and country—and I have put it into the system. I have got statements from judges saying that referendum requirements were not met; it is common knowledge that referendum requirements are not being met. You guys are the ultimate authority in saying, 'We're a committee that looks at our election processes'. If the public cannot challenge something or say that something is wrong, then why should we bother to vote? Why don't you guys just have a dictatorship and say, 'All right, we'll just follow along like sheep.' Joe public should be allowed, and are entitled, to come into the courts of the Commonwealth and challenge parts of the act or procedural steps that were not going right.

If I am correct in my assumption—and I was told by the then secretary to the Governor, who has since lost his job I believe—that the writ in Queensland was signed by the Chief Justice, and

the act says it has got to be signed by the Governor, then it raises the question of the legality of two senators who are sitting here at the moment. If the election was invalid, then the whole thing should go back to square one and be redone. In our situation, there are two senators from Queensland on this committee who maybe should not be here, because if that was not signed correctly and done correctly then the whole thing is wrong. This means it would change the right of Mr Howard to take control of both houses of parliament. It is a serious issue if a person cannot come before the High Court of Australia, in its role as the Court of Disputed Returns, and challenge the defect, which the act is quite clear about. Each one of you gentlemen has got to abide by the law. If you go down the road doing 70 kilometres in a 60 zone then you get booked, because the act says this. If the act says you have got to do it one way, and it was not done that way, then it makes the whole thing invalid. As I was saying to this gentleman over here, there is a separation of—

CHAIR—If I could assist you, Mr Gunter, you are both giving evidence now because we were running ahead of time. We will not run behind time. You are welcome to keep speaking. You are taking up your colleague's time. We have a hearing scheduled and we will be adjourning this on time. You can speak for as long as you want but this hearing will adjourn on time, in about 10 or 15 minutes. I point that out to you as a courtesy. To the extent that you keep talking, you will be taking up your colleague's time.

Mr Gunter—Just to finish off, the challenge is there. It should be run correctly to follow the procedural points. If the High Court will not allow it to run then the parliament should intercede because it does affect the public outcome. Thank you.

Mr Skyring—I have been aware of Mr Gunter's personal situation for some years now. He has followed on from my own endeavours extending over a period of some 15 years, during which I have tried to get to the heart of these problems. I would like to focus on seeking to address the matter which has really become central in matters of high government since 1 July—namely, the way in which the Senate in particular is to operate henceforth in respect of party discipline and all the rest of it. In short, having studied this matter over many years from a systems engineering point of view and coming as it from a legal viewpoint as well, the presumption which seems to underline all of the activities at the moment is that it is proper and correct that the affairs of state of the nation be conducted essentially on an entrenched partisan political basis. That, I would submit, is the prime difficulty. If one looks at the Constitution as framed initially there is nothing in it which justifies such an approach whatsoever.

How Howard has got to be in is rather interesting and, indeed, this was covered by the Chief Justice in his Boyer lectures in 2000 when he was talking about the evolution of the system. In the first constitutional debates in 1891 the representative in Western Australia made the point that either representative government—and by that I presume he meant government on a partisan political basis—will wreck the Constitution or the Constitution will wreck it. In fact the whole matter was put fair and square on the line, as indeed he observed in the events of 1975. As I read the situation, it has still not been resolved. The matter is in balance, and which way is it going to go?

The conduct of affairs on an entrenched partisan political basis ought to be phased out. The way that the financial affairs of the nation are conducted swings on the whole matter of money—what it is, how it is created and what constitutes its proper use after it has been so created. The

critical effort that was at the centre of those events in 1975—and I remember quite vividly because I really started to lock in on matters at that time—was the small matter of some $4,000 million that one Rex Connor wished to bring into the country to build a gas pipeline from the North-West Shelf down to the east coast. That caused an awful lot fuss. The issue got lost in the argument. There was a whole partisan political effort which got onto the affairs of state at a local level. That got lost completely and in fact that precipitated the so-called constitutional crisis of 1975.

The whole thing swings on whether in fact we do need what everybody says: foreign investment to develop this show. My reading of the show is not that. There is so much humbug and it comes about because the populace—including, I would say, the members of the legislature in particular—generally do not have a good grasp of what constitutes the proper exercise of the sovereign right of the Crown in the creation of money. If this were understood, then a whole lot of things that are seen not to be possible at the moment would become possible. That is the bottom line of the whole effort which is sought to be addressed so as to provide you with an answer.

This has an interplay with the role of the Crown—and it is noted that 'HM' over there is on the left. I note in passing that your table is set out to the side. I might pose the question to you: why aren't you turned around 90 degrees and under good Queen Bess because, despite what everybody says, we in this nation are still part of the British raj? A referendum challenging this got knocked back in 1999 and the ramifications of this are quite considerable, because, in essence, to all intents and purposes virtually since Federation we have been running our own show. It is like children growing up. We have in fact done that. But what is the common bond? It is the common law of England. It is absolutely magnificent if it is driven properly. As I see the situation, it has been corrupted by the impost of the law merchants of Europe, which has thoroughly screwed up the affairs of this nation. It is through this that we get our party politics. It has absolutely screwed up the whole monetary system. If that could be realised and the links sorted out, then this nation could take off like the founding fathers in fact had in mind but has never been able to be accomplished.

That is the bottom line of what this effort is about. It is trying to bring the place to order. There has got to be a crunch coming somewhere. This is what I am trying to work out myself. There must be at the state level and also at the federal level an effort to clarify just what the role of the Crown is. This is pointed out in some of the effort that I have put into this. There are two crowns in England. There is the one based at Buckingham Palace and there is the other at that square mile of the city of London somewhat to the east. They operate on totally different bases. The one I thought we were operating under was that based at Buckingham Palace, but in fact it is not. It is this point which has to be sorted out. Sort that one out and I tell you what: what could be achieved is at the moment not thought to be possible but it would become very possible. So to focus attention on this in a way that has perhaps never been done before, I challenge you—in this question time, brief as it might be—to demonstrate how it is that you say that you are properly there. This goes back to the validity of your nominations, because to be there you have to be properly nominated, which means you provide a nomination deposit. My question to you is: how do you say to me that you have satisfied the monetary value of requirements of the Electoral Act and that you are indeed properly nominated and that, regardless of what happens after that, you are properly there? Even if you do not answer me here and now, because for time

reasons we cannot take it further, I would commend you to think very deeply about this, because when you address that question then a whole lot of change can be possible.

I have a very quick closing comment in respect of a couple of points that were raised at the outset about preferential voting and my preference as a voter who is actually doing the voting. Optional preferential is really the only credible way you can do it, for the reasons given, insofar as with the compulsory effort for the last couple of elections I have put zero in each place because I say none of you are properly nominated so you cannot be voted for anyway—so that is just to follow that one through. There was something else but it has escaped my mind.

CHAIR—I am sure it is in your submission, Mr Skyring.

Mr Skyring—But that is the bottom line of what needs to be addressed. There is the fact that you talk in terms of parties on the ballot paper or whatever. That gives them a formal acknowledgment, which they do not have. Members should be in the style of Edmund Burke—free agents who have a really good grasp of world affairs and who truly speak as representatives of their people without any other form of—

CHAIR—I think you have made your point. I point out for the record that, with the generous courtesy of this committee, you have made the longest opening statement in any of our public hearings so far—and we are happy to hear that. Just to clarify things, with reference to your point about questions, I note that if there are questions they come from this side of the table, not the other. I point out again that the reason you were not initially asked to come was that, having read the submissions, committee members felt your submissions, whatever their merits, were self-explanatory and thus we did not have any questions of you. That may have changed. However, I do not have any questions, nor does it appear that any other committee members have any questions for you. That being the case, I thank you for appearing.

Proceedings suspended from 12.20 pm to 1.32 pm

CLARKSON, Mr John William, Private capacity

CHAIR—Welcome. The committee has received your submission, which it has numbered No. 34, and it has been authorised for publication. Would you like to amend or add to your submission in any way?

Mr Clarkson—No.

CHAIR—I now invite you to make a brief opening statement on the key issues in your submission.

Mr Clarkson—Thank you for the opportunity to appear before the committee; I regard it as a genuine privilege. I would like to emphasise that anybody who enrols as a candidate to be a member of either house of parliament aspires to be a servant of the Crown more than anything else, and therefore it is not to be taken lightly. Most of my submission centres around the importance of being a servant of the Crown. As a military man for some 25 years, I was very familiar with that. You can see in my submission the sort of emphasis I have placed on the importance of the position and the weight it carries.

CHAIR—Thank you. You have quite a detailed submission. We will now go to questions.

Senator BRANDIS—I will make a comment and ask you to respond, Mr Clarkson. I see that the main thing you are trying to do is to have the qualifications that are set out in section 163 of the Electoral Act reflect the requirements of section 44 of the Constitution. I take it that your point, which I think is a good one, is that there is a lack of fit between the requirements of section 44 of the Constitution and the requirements of section 163 of the act, so one has to look in both places to find all of the relevant qualifications or, if it be the case, disqualifications.

Mr Clarkson—Correct. I have not transferred all the conditions of section 44 into my clause, but I have transferred what I believe to be the important issues.

Senator BRANDIS—There is a particular issue: as Senator Mason reminds me, Heather Hill was the latest victim of it when she was elected as a One Nation senator for Queensland at the 1998 election. She was disqualified because she was found to have dual citizenship, and there was an issue as to whether, on its proper interpretation, section 44 of the Constitution meant that she was subject to a foreign sovereign—or whatever the expression is. The meaning of that has always been rather obscure, hasn't it?

Mr Clarkson—Yes. The executive committee did an investigation on that, which I have taken the liberty of reading. I understand that the existing wording of that part of the Constitution is somewhat old English et cetera.

Senator BRANDIS—You are quite right. The founding fathers picked up some old English legal language and inserted it into section 44—with surprising consequences, as it subsequently turned out.

Mr Clarkson—It is for that reason that, in paragraph 1(c) of my submission, I have tried to make it simple by saying that the person does not claim 'citizenship in any country other than Australia' rather than going into the long preamble that section 44 does.

Mr MELHAM—The Constitution goes further than that. It is not just a question of claiming citizenship. The problem with Mrs Hill was that she had British citizenship, which, as a result of the Australia Act 1986, made her subject to a foreign allegiance. That was why she was disqualified—the irony being that earlier British citizens took their places in the parliament, because it was not as rigorously enforced as it was as a result of the Australia Act.

Senator BRANDIS—But it is a good point that you make, Mr Clarkson. If only for clarity of drafting, you would think that section 163 of the act, which purports to set out the qualifications—but, as you point out, is plainly incomplete—could at least say, as one of the subsections, something along the lines of 'and is not otherwise disqualified by reason of section 44 of the Constitution'.

Mr Clarkson—Yes, I see your point. But, as I said before, I want to place the emphasis on 'does not claim citizenship'. I can also see the other gentleman's difficulty. I have read the report about the number of people in Australia who have dual citizenship, and that could pose a problem. But I still emphasise that I would like to see all candidates follow the line that they are citizens of Australia only.

Senator BRANDIS—That is fair enough. I suppose my point was a more technical point—that is, if a section of the Commonwealth Electoral Act purports to set out the qualifications, it should set them out exhaustively.

Senator MASON—There is also an issue—one that I think this committee has dealt with in the past—relating to section 44 of the Constitution and people who have held offices of profit under the Crown. That has been an issue of concern—indeed, it was for me when I first entered parliament, because the status of university lecturers was an issue. It has been a constant bugbear, hasn't it?

Mr MELHAM—I waited until the governor accepted my resignation as a public defender before I nominated.

Senator MASON—I suppose the breadth of that section is unclear. Senator Brandis is right. In a sense, if the Commonwealth Electoral Act had all the prohibitions and prescriptions about qualifications for membership of the Australian parliament included in it, it would make it a lot easier.

Mr Clarkson—Correct.

Mr MELHAM—Can I take issue with one aspect—that is, your extension of what should be a disqualification to do with pending charges and previous convictions of an indictable offence. My problem with that is that the Constitution lays it out. It says 'has been convicted' or 'subject to be sentenced'. It seems to me that that is what we as a parliament should abide by rather than further extending a disqualification in relation to those terms, because the Constitution does of

course allow for a person having served their sentence. A person is not then disqualified from contesting an election.

Mr Clarkson—The way section 44 reads, that is correct. But my point—

Mr MELHAM—You want to take it to the next step?

Mr Clarkson—I want to take it to the next step. When I was a member of the defence forces, I was subject to Queen's Regulations, purely as a servant of the Crown. I saw a number of cases where it was discovered that a fellow had a previous conviction where a sentence had been given; he had served whatever punishment was awarded to him but, because of that previous conviction, was discharged from the service within 24 hours of the discovery. I think that taking it to the next step would bring it into line with the existing Queen's Regulations.

Mr MELHAM—I am suggesting that the principle you want to apply, in my view, would and should require a constitutional amendment.

Mr Clarkson—I would agree with that.

Mr MELHAM—I am not arguing about the position you are putting; I am saying that the appropriate course would be to amend the Constitution. If that is what the majority of people in a majority of states think then that narrow requirement should be imposed. But at the moment I would have thought that we should go with the spirit of the Constitution which relates to those with convictions or subject to be sentenced.

Mr Clarkson—Yes; that are still in progress.

Mr MELHAM—Yes. But I am saying that we are bound by the Constitution. What we would need to do is amend the Constitution to reflect the values that you are articulating rather than—

Mr Clarkson—I would agree that my clause is tighter than the existing constitutional clause. If my clause were to be approved, I agree that a constitutional amendment would then be required. But you can see my point—

Mr MELHAM—I understand your point; I am not dismissive of it. You are making a very valid point in terms of public policy as to whether or not we should have a narrower requirement. The Constitution at the moment is a little broader than what you are suggesting.

Mr Clarkson—That is true.

Senator MASON—You argue that people should, when they are representing an electorate, live in that electorate.

Mr Clarkson—Yes—you have obviously read revision 1.

Mr MELHAM—You don't want to evict the Prime Minister from Kirribilli House, do you?

Senator BRANDIS—Or the Leader of the Opposition from Sydney.

Mr Clarkson—My initial submission was that he or she should reside in the electorate that he or she aspired to represent, and I was advised by the Australian Electoral Commission that that would be far too tight and would never get approved et cetera. I have since said that they should be enrolled in an electorate of the state which he or she aspires to represent. If a person were enrolled as a candidate for the Senate, I would argue that that person should have to be enrolled in an electorate in that state. If a person were a candidate for the House of Representatives, as reference 2 indicates I do not say that he or she should reside in that very electorate but they should be enrolled in an electorate.

CHAIR—The Senate point is a bit by the by, inasmuch as I think senators can choose where they are enrolled.

Mr Clarkson—In that state, anyway.

Senator MASON—That is right.

CHAIR—I know where you are coming from; I have some sympathy for it. What you are saying is that someone from Queensland ought not be able to nominate for a seat in Victoria.

Mr Clarkson—Correct. I would go one step further than that. We have a small number of cases of this; we have a number of people in our country who are simply not enrolled in any electorate anywhere. My argument is that such persons would not be entitled to become candidates for the House of Representatives.

CHAIR—If they had not been enrolled?

Mr Clarkson—If they are not enrolled in an electorate anywhere, my argument is that—

CHAIR—Which is a legal requirement of them.

Mr Clarkson—Correct, but it does happen.

CHAIR—It does; that is right. One of the issues that we are grappling with is the law of the land: you must be enrolled if you are eligible to vote. We say that quite firmly, and then we have this other clause that says it is the law of the land that you must be enrolled if you are eligible to vote—unless of course you are not enrolled, in which case we will give you another seven days, when the election is called.

Mr Clarkson—All that is true. But, as you would agree, there are a number of people in our country who are not enrolled in any electorate anywhere. My point is that the onus would be on the prospective candidate to establish that he or she is actually on an electorate roll.

CHAIR—On an electoral roll in the state?

Mr Clarkson—Correct. On an electoral roll within the state in which—

CHAIR—You accept, as you have done quite fairly in revising your original proposal—

Mr Clarkson—That was a bit too tight.

CHAIR—that, with redistributions, boundaries can change? What you are saying is that, if you reside in Victoria, you are eligible to run only for a House of Representatives seat in Victoria, provided you are on the electoral roll?

Mr Clarkson—Correct; that you are actually on an electoral roll.

CHAIR—To take my example, which is as good as any—I am the member for Casey; I live in the electorate, in the middle of it—under your proposal, I could run for any seat in Victoria, if I chose?

Mr Clarkson—And, as you said, that electorate is within the state of Victoria.

CHAIR—Yes. But, to take the other extreme and without trying to put words in your mouth, what you could not do is be off the electoral roll and from another state and then decide, either for some reason of your own or because you are approached by a party, that you want to be a candidate for a seat—and let's be frank about it; it would often be what is regarded as a safe seat—and then travel interstate, get yourself on the electoral roll at the last minute and then run for that seat and become a member of parliament?

Mr Clarkson—That is correct. You will notice in my submission that I have also covered myself in that sense in that I have asked for the person who has been on that roll to have been on it for a minimum of 12 calendar months.

CHAIR—I did notice that when I was reading the submission.

Mr Clarkson—Which covers that point of a political party grabbing Jimmy Bloggs here and saying, 'This fellow's such a good bloke, we'll put him in this safe seat; but Jim's not on the electoral roll—bang. So, just before the rolls close, we'll put him on the roll.'

CHAIR—Or indeed after the election is called?

Mr Clarkson—Yes; but, to me, to say, 'Just prior to the rolls being closed, we'll put him on the roll,' is not good enough. In your case, you were enrolled in that electorate and have been for some time; and, if the powers that be wished you to be a representative of a neighbouring electorate, that is fine, because you have been on an electoral roll for longer than 12 months.

Mr MELHAM—Why shouldn't those things be left to the electors to determine and mark down the candidate if it becomes an issue in the election? Why should it be legislated rather than allowing the status quo? If political parties or individuals run and they fall into the categories that you mentioned, why shouldn't that then become an issue for the election itself—for the candidates, for the political parties—to try to convince the voters of the merits of voting for someone who is not enrolled in their electorate or does not live in their electorate or whatever?

Mr Clarkson—Some of my critics have expressed that view, and my argument is that unless we keep the act reasonably tight in this sense—

Mr MELHAM—Some would argue that it is tight because of the minimum requirements: citizenship, reaching the age of 18 and being entitled to vote. Some people might argue that being totally prescriptive is a bit over the top and that what you really want are minimum standards; once you meet them, you are eligible to be a candidate and then the rest falls into a political debate or argument for the constituents to then vote on—whether they are prepared to vote for an absentee member.

Mr Clarkson—I still believe that the existing act is very open in the sense that, as we have just discussed, a person who is not on the roll anywhere can suddenly be drafted in and become a candidate.

Mr MELHAM—Providing they meet certain requirements; they cannot just be—

Mr Clarkson—True.

Mr MELHAM—shoe-horned in without meeting certain minimum requirements.

Mr Clarkson—I would rather see the openness repaired and a more disciplined approach to the requirements. Perhaps my military background is coming out again!

Mr MELHAM—Yes, I know; it is a bit of a military approach. It is not one I necessarily agree with, but I respect where you are coming from.

Mr CIOBO—Mr Clarkson, it could lead to some quite perverse outcomes, though, couldn't it? For example, the southernmost seat in Queensland is a seat called McPherson. Under your proposal, somebody who lives at Tweed Heads would not be allowed to stand as a candidate for the seat of McPherson, yet someone who resides in Cairns could.

Mr Clarkson—Unfortunately, that is correct. I played with that for some time, when I went from revision 1 to revision 2—from my original request that the person had to be enrolled in that very electorate. When I was told that that was too tight, I said, 'Well, at least in the state.' The point you raise is very true, and I still struggle with that, about how—

CHAIR—Your point, just to interrupt, would be that at the moment you could live in Hobart and run for a seat in the northern tip of Queensland.

Mr Clarkson—Yes.

CHAIR—Your proposal is not ideal, but it is a tightening.

Mr Clarkson—At the moment what you are talking about could be legally permissible. I can see your point in that if you lived at Tweed Heads you would not be allowed to have a seat in Coolangatta. It is difficult, but—

Mr CIOBO—I guess I am querying the rationale for it. I am someone who believes in the operation of the market and, as far as I am concerned, if someone who resided in Tasmania wanted to run for a seat in Cairns then my best advice to them would be: 'Good luck to you,

son.' So I am not sure of the rationale behind the need for us to stipulate through legislation that in fact they have to reside in that state.

Mr Clarkson—Well, (a) you would not get my vote—

Mr CIOBO—But that is the whole point.

Mr Clarkson—That is my personal opinion. I just see it as a more disciplined approach to how we construct—

Mr CIOBO—Sure, but I am asking: what drives the need for a more disciplined approach? You say it is a more disciplined approach, and we can agree on that. I am questioning the reason that lies behind that—why?

Mr Clarkson—Because I do believe there are some who slip through the net and I think that, to raise the standard to a very high level, we need to remove the possibility of the odd ones here and there slipping through the net in that sense.

CHAIR—On the point Mr Ciobo has made to you and on your response, can you think of an example where this has occurred? Is there one that comes to mind where somebody has been successfully elected in the way that your proposal would prohibit? I can think of only one example where it could have happened at a federal level—and I will defer to the expert on political history to my right, Senator Brandis. The best example I can think of would be former Prime Minister John Gorton, who was the member for Higgins, in Victoria. He ceased to be Prime Minister when he lost, I think, preselection for the seat of Higgins. Then in the 1975 election, when he was still the member for Higgins, he did not nominate for that seat but he nominated as a Senate candidate for the ACT. He was unsuccessful, but had he been elected your proposal would have prohibited his candidacy. That is the closest example I can think of. I am just wondering whether there are any others.

Senator BRANDIS—There is.

Mr Clarkson—There was one in last year's election.

CHAIR—From another state?

Mr Clarkson—No, in this case it was because the man was not on the electoral roll.

CHAIR—Right, but I am talking about someone who—I am thinking of a federal example—was in another state.

Senator BRANDIS—I think, Mr Clarkson, to respond to the chairman's challenge, the example that most people think of is Senator Hattil Foll—

Mr DANBY—I would challenge you that I do not think most people would think of him!

Senator BRANDIS—who was elected as a senator from Queensland at the 1917 election and continued to be elected until his retirement in 1946 but for at least the last 20 years of his career lived in Sydney. That is the one that comes most readily to mind.

Mr MELHAM—Whose party was he in, George?

Senator BRANDIS—He was a member of the Nationalist Party, then the United Australia Party and then, ultimately, the Liberal Party of Australia.

Mr Clarkson—To answer your question, I cannot quickly think of a case that I know of that involved an interstate candidate. But the way I formed the paragraph was my attempt to tighten it up. But you are correct—I cannot think of a case where that would have been breached in recent history.

CHAIR—What your proposal would have prevented—without being overly personal about this—is the eligibility of the current member for Kingsford Smith, in Sydney, because although he was from the state I do not think he was on the electoral roll for the 12 months before the 9 October election. Am I right?

Mr Clarkson—Correct. He was not on an electoral roll anywhere at the time when the election was called.

CHAIR—So that would have prevented him running anywhere.

Mr Clarkson—Correct.

Mr CIOBO—To my mind, the fact that he was subsequently elected demonstrates that the constituents perhaps did not care too much about that.

Mr Clarkson—I would have to speak to the members of the electorate about that.

Mr MELHAM—Is this the issue—that it is really up to the electors? What we should have are minimum standards, not something that is totally prescriptive. The rest of it then becomes an electoral contest for the electors to determine who they want to be their representative.

Mr Clarkson—I am trying to raise an issue here that these people are nominated as candidates—this is not just a willy-nilly thing. These people are aspiring to be among the leaders of our land.

Mr MELHAM—Yes, I understand that.

Mr Clarkson—They are aspiring to a high office and I do not want to take it too lightly.

Mr MELHAM—No-one is, and no-one is saying you are, Mr Clarkson. It is just a question of degree. The Constitution lays down certain requirements before you can be elected to parliament, and a number of people have been elected and have fallen foul of them, the most recent being Heather Hill. But in terms of the Electoral Act I would argue to you that we should have uniform minimum standards, but I would also argue that, as a matter of public policy, there

is a point you should not go beyond, because that is the realm of voter land. To me, if you are 18 and you are an Australian citizen, you are entitled to vote at elections and that—obviously subject to the office of profit and citizenship aspects—that should be sufficient to nominate.

Mr Clarkson—In the existing section 163, the little phrase which I had difficulty with was in paragraph (1)(c)(ii), where it says 'a person qualified to become such an elector'.

Mr MELHAM—Where's this?

Mr Clarkson—If you look in the existing act, paragraph (1)(c)(ii) says:

... an elector entitled to vote as the House of Representatives election; or

... a person qualified to become such an elector ...

That is the area that I was trying to fix because that is the area I had a problem with personally.

Mr MELHAM—That is okay. You have a problem; others do not.

CHAIR—Thank you very much for appearing today and for your submission. Thank you for taking the time to come along. It has been good to hear from you.

Mr Clarkson—Thank you for your time and for listening. It is certainly a privilege to do this.

[2.01 pm]

BEVIS, The Hon. Arch, Member for Brisbane, Commonwealth Parliament

CHAIR—Welcome. I am not sure whether we should be welcoming you or you should be welcoming us to your electorate.

Mr Bevis—I will offer you a welcome to the electorate of Brisbane in my opening remarks.

CHAIR—Thank you very much. It is good to have you here. We have got your submission, No. 94, which has been authorised for publication. If there is nothing that you wish to correct or amend, we invite you to make a brief opening statement. The issues which you have raised in the submission are ones that the committee has been considering already. After your opening statement we will have questions.

Mr Bevis—Thank you for the opportunity to present to you. I think that the work of the committee is important. Having had some past experience as a member of the committee, I think that it is a valuable part of the process of transparency and accountability and the way in which our democratic process operates. I might just indulge in an effort at the political trivia of the last session and wonder whether Senator John Stone, who I think got elected as a senator when resident in Sydney, might qualify as an example where the electors certainly did not see that as a particular problem.

Leaving aside the trivia of the moment, there are three areas that my submission seeks to address: the postal voting processes in the last election; the actual election day itself and particularly the queues; and the redistribution process, which I think is a fundamental part from which all this derives. I will take them in that order. In terms of postal voting, I would have to say that the conduct of postal voting at the last election was by a long shot the worst that I have experienced in all of the elections that I have contested or been associated with. I say that in relation to a couple of aspects. The forms which were used—that is, the material that went out with ballot papers—had obviously been redesigned since earlier elections. The result was that the personal details of those people who were voting were displayed openly on the back of the material.

I am sure that my office was not alone in receiving many complaints from constituents who were offended that their personal details were on public display, to the point where some did not want to cast a vote because that material would be on public display. Others put the material inside a larger envelope but were uncertain whether the Electoral Commission would then process it, because, in the eyes of some, it may have been tampered with in transit. This was a point, I might say, we actually were concerned about enough to check with our divisional returning officer, so I did not regard it as a flippant concern that people raised. It does beggar belief that there was a determination made to alter what had previously been, from my perspective, a workable design—it did provide some privacy for people in that their particulars were on an enclosed envelope inside a larger envelope—and that someone went to the trouble, and no doubt was paid for the design work, to create what was a less satisfactory system.

That, however, was only the start of the problems when it came to postal voting because, having submitted applications, people had unbelievably long delays in getting ballot papers. By that I mean a matter of not a few days but a few weeks, literally. We had cases of people who had waited three weeks. I well recall being out on the campaign trail just before the election and being accosted by a family who had done the right thing and had applied about 2½ weeks prior to the day I met them. They were going overseas the next day and the whole family would be away. Their ballot papers had not arrived. Their material did not get lost; it had been received and it got caught up in the system.

We had, on a regular basis in my office—and, again, I am sure this is not a unique tale—a long list of complaints from people who said they had made applications for ballot papers and not received them. We actually had situations in which we had people applying one, two and, in a small number of cases, three times for ballot papers for postal voting. We had circumstances where people who applied on the same form—that is, it was a double-up form, where you could have two applications on the one form, inside the one envelope—and one person received their ballot paper and the other did not. That really does raise questions about processing of documentation once it was received.

We raised our concerns with the Electoral Commission on a number of occasions during the course of the process and were advised that the previous practices of the divisional returning officers receiving and processing these postal vote applications and then forwarding out the ballot papers had been altered and that there had been a national contract awarded for these things to be processed centrally. I believe that was in Sydney and/or Melbourne. In any event, as a result of our complaints and persistent inquiries, we were then told that the number of applications had exceeded expectations. I would be interested to look at the cold, hard figures on that, because there is pretty good data on how many postal votes you can expect to get in an election, so whoever got awarded that contract seems to me not to have done their homework particularly well—or the AEC, in its calculations, did not.

Then, in about the last 10 days, the system was changed in recognition that the original system had failed comprehensively—at least, in Brisbane the system was changed—and the DRO began issuing the ballot papers. From then on, I have to say, the system worked much more smoothly. Those who applied after the change in the system were getting their ballot papers well ahead of people who had applied a week earlier, which is an indication of just how poorly the originally intended system operated. That is a major flaw in the processing of a lot of ballot papers and, as we all know, postal votes can have a very significant impact on the outcome of elections. It is not an ancillary part of the process; it is a very critical part and requires close scrutiny by the committee.

There are always election day queues. I am not sure whether the Electoral Commission maintains a record of how many people come each hour during the day. If they do not, it might be a handy record for the presiding officer at each polling booth to keep. My experience has been, generally, that the crowds are bigger for the first few hours of the day—this time around, incredibly so. I do not think it was just a feature in Brisbane; other members of parliament I have spoken to commented similarly. By ‘large crowds’ I mean that there were queues of 200 to 300 people. That was a constant line outside the door for about the first 3½ hours.

Places like Ferny Grove State High School, which was a large polling booth and a dual booth between Brisbane and Dickson, is an example of where that sort of queue occurred for that period of time. It may well be worth while, I think, for the AEC and the committee to explore having additional staff for somewhere between the first four and six hours of polling day. My observation is—and I do not know whether this is the case—that there is a set number of people that the AEC employs for each polling place, and that is usually one per issuing point. That is fine; it is convenient, but it does not tend to meet the pattern of voters, in my experience. I cannot see why we do not look at having a little bit of flexibility in that. Increasing the number staff for the first four to six hours, I think, would more than cover the usual peaks.

I know this is a bit of voodoo science in the sense that you cannot always predict when people are going to arrive to vote, but I think most people—and there is enough experience around this room at the moment to test the point—in their years of handing out how-to-vote cards would assert that there is a rush in the first few hours, there is a lull after lunch and it picks up a bit later in the day. Those first few hours are always busier so we may need to think a little bit more creatively about how we staff polling places to make the experience a little less distressing or delaying for the public.

The final point I wanted to comment on is the redistribution process—not how it ends up, because in these circumstances no-one ever ends up with an outcome that they would have written a submission for themselves. There is a real process in the way in which this has evolved over time in that the act sets out some processes to encourage accountability and transparency. The act requires the redistribution commission and the augmented panel to provide reasons for their determinations, and in fact they do not and have not done so for a long time. Most people tend not to spend much time thinking about that because they end up with a redistribution once every seven or 10 years. In Queensland we well know that is not the case. As more and more people discover our beautiful state and want to come and live here, we find ourselves having a redistribution if not every election then every second election. Therefore I think it does focus the attention of those of us in Queensland more than in other parts of the country. But the principle holds good no matter where the redistribution occurs.

The act sets out a requirement for reasons to be provided. I imagine a number of you have over the course of your careers had a close look at redistribution committee reports and have been involved in one way or another with objections to the initial reports. People who make submissions and objections do set out reasons, by and large—certainly the serious submissions do—as to why boundaries should be in a particular place and not another, and those reasons have to have regard to the requirements in the act at the particular time. They have changed over the last 15 years that I have been doing this. But the reports make no reference to the criteria set out in the act. They make no effort to provide reasons. At best they provide a statement of conclusions with one or two sentences that may pass as something of an explanation, but nowhere are reasons provided for the determinations that are made.

On the last occasion, having been through this process a few times in the last 15 years, I decided to take issue with the commission on that very point. I was pleasantly surprised that the then chairperson of the redistribution panel and also the then chairman of the Australian Electoral Commission, Trevor Morling QC, made comments that I have referred to in my written submission where he acknowledged that there had been an absence of reasons given. To quote his words, he said:

... I think you can fairly assume that whatever the decision is that is made by this augmented Commission about the ... boundaries of Brisbane will be accompanied by reasons ...

I then included in my written submission to you what the finding was, and I would challenge anybody to show me where the reasons are that were provided. So not only does the act require it but, notwithstanding that I have taken issue with the redistribution commission on this and had that concern acknowledged by the Hon. Trevor Morling QC, the augmented commission then made its determination. It seemed to me to be rubbing salt into the wound on the point for the augmented commission to make this comment, which I have also included in my written submission:

The Commission considered this objection and saw some merit in the argument but believed that on balance the Redistribution Committee's Proposal should be accepted ...

Therein lies the reasons. If you can determine those reasons, I will be keen to hear them.

Senator BRANDIS—They were very polite.

Mr Bevis—They were very polite, and I was comforted to know that they saw merit in the argument that I advanced. I was less than impressed, though, that they decided to dismiss it without any explanation of either what the merit was or what the shortcomings were.

CHAIR—It is very *Yes, Minister*ish.

Mr Bevis—It is. You can tell that I was not in a really conciliatory mood after all this had transpired.

Senator BRANDIS—On balance.

Mr Bevis—That is right—on balance. In a former life I had the privilege of chairing this committee. So I have some understanding of the things that you would look at and consider. It really is an important part of the process of democracy that the boundaries that are drawn are seen to be fair without recourse to concern of any improper activity. That is why the act says 'reasons are given'. That is why there is an augmented commission. That is why hearings are open and heard in public—like this one today. That transparency is very much a bedrock of our democratic process, and it does not function if the commission and the augmented commission are so arrogant in dealing with the arguments and submissions that are put before them and refuse to provide reasons—in spite of the fact that the act says they should. At the time, some people told me that there is recourse in the courts. There is, but you and I both know the value of that in a practical sense. The parliament has legislated for a process to be followed. My strong view is that, in this respect, it is not being followed—and that is a matter of concern to the operation of the democratic process, which I would hope the committee would look into. With those comments, I would be happy to do my best to answer any questions from the committee.

CHAIR—Thank you for your submission and, sincerely, thanks for coming along to speak to it. You have raised a number of important issues that we have already been looking at. For your interest, the issue you raised about personal details being comprised has been raised by members of the public who have put in submissions. There is one from Melbourne, and we will be hearing

from that witness when we have the Melbourne hearings. So your instincts on that are quite right—on a preliminary basis. With respect to postal voting, it is no state secret that there were big problems, particularly here in Queensland. That is why we first went to Dalby, Longreach and Ingham. You have raised today some important evidence that I want to talk a bit about.

We have had a lot of evidence already from the Electoral Commission about the problems that occurred with the mail house, largely, when it came to the postal vote catastrophe—not to put too fine a point on it—in the electorate of Dalby. The early evidence suggests that it was largely confined to errors with general postal voters who were permanently enrolled as postal voters. They were the first cut when postal votes started going out and there was a processing problem. They were spoils, if you like, inasmuch as they were not rectified—and we are hearing further evidence from the AEC back in Canberra.

You raise a related but different issue, which is something that, anecdotally, we have been wanting to flesh out—that is, people applying for postal votes in a suburban area. This is quite important evidence. In the country area, it was complicated by the fact that mail deliveries happen only twice a week. Excuses can be made for magnifying, but you are in the heart of Brisbane—a major city—and you are saying that you had lots of evidence of geographically small areas, people applying more than once and some people getting them and some not getting them.

Mr Bevis—Absolutely. All of that is absolutely the experience I and my staff had. In fact, before I came in here I sat down and had a look through the file and saw that there are actually names of people who rang us on a regular basis saying, 'We still don't have it.' This was not a problem of general registered PVs; these were people who, for whatever reason, made an application. They were not listed as a permanent PV recipient or a general PV. Their applications were received in the Brisbane DRO. In fact, when we would get a complaint, we would check with the Brisbane DRO. The Brisbane DRO would confirm that they had them and that they had been processed and then our constituent would ring us back and say, 'We don't have our ballot paper.' In a number of those cases, they would ring us back two and three times. We have some of those names still on file. I could seek the permission of the individuals concerned, if the committee wanted to look at particular cases. But I would obviously want to get the approval of the individuals.

CHAIR—Clearly.

Mr Bevis—I also think that the records of the Australian Electoral Commission and the divisional returning officers would bear out this problem, because they were getting phone calls—and not only from my office. I know they were feeling pretty frustrated as well because they had done all that was in their responsibility to do, which was processing the data that then went off. Then someone else was to issue the ballot papers. I can only imagine how that would have been compounded in a place like Dalby, where you have reduced mail services to complicate all of that. But, as you suggest, this is the centre of a capital city. There is no problem with mail delivery. This was purely the postal voting system adopted by the AEC, which was abysmal.

CHAIR—I would like to draw you out on a couple of points, as this is vital evidence, before we go back to Canberra and the AEC. We had evidence in Dalby from the general postal voters

who, by definition, are very familiar with the system—they are remote and they are on the roll—that straightaway they knew there was a problem because in previous elections they had got their material very quickly. For days and days they were ringing the Electoral Commission, which was saying that there was not a problem. It was only at the very last minute that it was admitted that there was a problem. That was the rough evidence. Was there anything like that here to compound the frustration?

Mr Bevis—Our principal contact was with the Brisbane divisional office and I found their staff and the various divisional officers—the DROs who have been in that job over the 15 years I have been the member for Brisbane—to be professional and competent in what they do. Initially, I think they were saying that everything was in order, that it had been processed and that they should get it in the next day or two. Four or five days later, when nothing had turned up, I think they started to get the message as well. Certainly they were as concerned about the problem once we got into the election campaign and this issue started to snowball. I am not quite sure of the process that led to the change—I think it was about 10 days out—that authorised the divisional returning officers to issue ballot papers. But I take it from reading between the lines at the time that the divisional returning officers were pretty agitated and were lobbying to have some change in the process.

CHAIR—To take control of it at the local level.

Mr Bevis—Yes. I think there is another indication of how deep-seated this problem was and how widespread it was.

Mr DANBY—Did you contact the Queensland office or just the Brisbane office?

Mr Bevis—We would have contacted the Queensland office but our records, which I had a look at, were all related to individual cases that we contacted the Brisbane DRO with.

CHAIR—From time to time you will hear arguments that it is to do with the volume of postal votes. Would you agree as a general proposition—and this is certainly my view—that, given what an application entails and what is possible in a modern, technological world, that the number of applications you get should not matter when it is simply a matter of turning around an address? I presume, in your capacity as someone seeking re-election, that you would not have any problems with that sort of thing yourself.

Mr Bevis—This is not rocket science. Frankly, if some of the people who think they had logistics problems with this were to be sat down in the middle of the campaign office of a marginal seat member, their heads would spin. This is an event that they have known of in advance. This is something they plan for. It is not something over which there are unknowns—other than the actual total number, which you can still get a pretty good estimate of. I know that in my electorate we make an estimate of how many postal votes we think will be processed, and we come pretty darn close to the final figure. I am sure that any halfway reasonable political analyst could do the same thing. I have thought about it since the election a number of times. I cannot for the life of me identify any excuse for the total stuff-up that occurred in the distribution.

CHAIR—In a bipartisan spirit, I asked that because, when you look at it technically, in an IT sense, it should not matter whether it is three per cent or eight per cent, or whatever it is; it is simply a processing issue.

Mr Bevis—Even if you made an estimate and you were out by a large margin, the actual task of processing that we are talking about here is not rocket science. The technology is pretty straightforward; it is not that hard to do. It has nothing to do with partisan activities at all. This is about ensuring all Australians who are entitled to vote get a chance to vote.

Mr DANBY—Before we go on to the wider questions, I want to stick with a few technicalities on the postal votes. How soon after the election was called did you start hearing from your postal voters?

Mr Bevis—It would have taken about a week, because we would have been processing postal votes very soon after the election was called. We would write to people to say that their postal vote had been submitted and they should receive their ballot paper in the next few days, which had been our experience previously. The Brisbane divisional returning office would normally turn them around within about a 48-hour time frame, so they would get their ballot papers about three days after we had lodged them on their behalf. In that first week we were getting people who were ringing us up, and at that stage we made inquiries. We did not realise the magnitude of the problem but by the end of the second week we did because it just was not happening. People whose applications had been forwarded 10 days ago were still not getting ballot papers.

Mr DANBY—I think this phenomenon is so important, as the chair has said and your good anecdotal evidence of it demonstrates, that we should be asking the AEC to provide electorate by electorate how many calls they received about this. We could probably get the information from them but it would be interesting to correlate it with your information. Could you now or via the office work out how many calls you received?

Mr Bevis—I will check. We may be able to. I do not know whether we would have a total tally. We certainly have a number of case studies where we still have the records of individuals with the details of their names and so on.

Mr DANBY—The totals would be helpful too if you can do that. I am sure we can get it from the Queensland office probably electorate by electorate because I am sure they should have logged these. If they have not, I would be very surprised. The last technical question on the postal voting issue is with respect to the people who applied for two postal votes on the one form and only one person got one. Do you have case studies of people who were regular postal vote applicants, other than GPVs, where one person got it and one person did not? Because our evidence is that the GPV process was stuffed up right at the beginning and some people got their postal vote because the ballot paper was not spoilt in the printing process and the other half of that family did not get it because it was spoilt in the printing process and that was not attended to. They have told us that this all relates to GPVs. Do you have any people who were regular postal voters where half the family got it and half did not?

Mr Bevis—I believe that we do not have large numbers of cases on that particular issue where one member of the family got it and the other did not, having submitted them at the same time on the same sort of form. I believe they were not general postal votes but—

Mr DANBY—That is very interesting.

Mr Bevis—Rather than mislead you, I will undertake to check our records and see whether I can get some further information on that for you.

CHAIR—On that issue, we would be more than happy for you to check with your office and any other people and put in a supplementary submission. I will ensure that the committee secretariat staff get this to you. We have had evidence along these lines when we were in Longreach, and that is why what Mr Danby raises is of interest to us. We have a supplementary submission from a witness who appeared there who was a general postal voter, just to give you the summary, and who had rung and rung and finally ended up getting two sets of ballot papers but with a letter saying, 'We know that we've sent you two but please only fill out one.' Of course, the drama was compounded in the end because, as you may have seen in the papers, there had to be special agreement from the Governor-General to allow these people to vote after the election.

Mr Bevis—Yes, I recall that.

CHAIR—In any event, you might be aware that when that happened, as far as we can tell for the first time in federal history, Queenslanders managed to vote after the election and also, in the case of 100 or so of them, vote for Senate candidates in New South Wales because the wrong Senate paper was included. We have had all this evidence on the general postal voters, from the regional areas where we went first. But your evidence is from a capital city situation and to do with people actually applying. It is important evidence for us because it indicates not just a problem at the beginning—it was undetected—but a problem in a processing sense, which is why I asked you that earlier question.

Mr Bevis—Overwhelmingly, the problems we had were with people who applied. But I will check the specifics about the two people on the one form, whether that was a general PV or a one-off application.

Mr DANBY—I might continue with the two other criteria that you raised in your submission. I have two questions about election day queues. Are you finding in Brisbane, as I find in Melbourne Ports—and I am sure this is the case in other electorates too—that there are some big booths that are becoming bigger all the time and that people tend, because of familiarity with particular polling booths, to increasingly vote there in the thousands? There is one booth in particular I can think of in my electorate that has gone from 3,000 to 3,500 to 4,000 to over 5,000. It is very centrally located and, of course, it exacerbates all of the problems you talked about with queues in the morning. Your voodoo science is certainly my voodoo experience as well. Our experiences are very similar. Do you think the employment of casual staff in the morning, in addition to the full-time staff that they have, would solve that particular problem?

Mr Bevis—I do. And I cannot see why—say they have to break down A to K, or whatever it might be—they cannot in the morning have two or three people on the A to K desk issuing, rather than have a view, which seems to be the practice, that everything has to be stovepipe for the whole day. This is what it is going to be like at eight o'clock in the morning, and it is going to stay like that until eight o'clock at night. Actually, six o'clock at night—that was an old Queenslandism slipping in there. A bit of flexibility in the way in which that is organised would

make life a lot easier for everybody, and I would think the AEC would not have difficulty in recruiting people on the basis that they are going to work for between four and six hours in the course of the day. It would certainly reduce the waiting times. I do not see how making people wait around outside the door in a queue of about 200 enhances anybody or anything in this process. If we can do something to fix that, we should.

Senator MASON—It was busy at New Farm State School, I presume.

Mr Bevis—I was at Ferny Grove State High School in the morning and went to New Farm in the afternoon; they are both very big booths. When I got to New Farm, people at New Farm told me exactly what you just said, that in the morning it was as busy as what I had seen at the other end of the electorate when I had been over in the west. Talking to most of my campaign workers through the day, that was reflected. It is exacerbated in the bigger booths, but it is even in some of the smaller booths. For nostalgic reasons I always vote at a particular booth where I grew up. It is not a big booth but even there—which is normally an easy walk in, walk out—there were queues that surprised me. But it is the bigger booths where you get the long, long queues, and I can see no reason why we cannot address that with a bit of flexibility in staffing.

Mr DANBY—Can I conclude with a couple of questions about redistribution. I think the point that you make about the responsibilities of the redistribution committee under the act are very well made. I can understand your frustration of getting that letter from Mr Morling and then getting the nonreasons advanced to you in the letter. Are you aware of other members, Liberal or Labor, who have had problems with redistributions, who have taken this up in the way that you have and who have received any responses that are more satisfactory, less satisfactory or as unsatisfactory?

Mr Bevis—Over the years, I have discussed this with many colleagues in all sorts of different political parties who have shared a similar frustration. I do not know of anybody who has found a way of dealing with it. I suppose it reached frustration point for me when, to his credit, the then chairman of the Electoral Commission sympathised with my concerns and acknowledged that there was nothing in the earlier report to provide reasons but that I should rest assured that there would be in the augmented commission's report. Unfortunately, his term of office ended midstream and none of that occurred. So at that point I decided that—unlike on previous occasions when I have been through the same process and have been frustrated—I would not let it lie.

It seems to me that this is the only body in the parliamentary process that has the scope to look at it—hence, I have come here. I do not know anyone else, of the many people who I have spoken to over the years on both sides of the chamber who shared the frustration, who has pursued it. Maybe some people have spoken to ministers or others about it; I do not know. Frankly, something needs to be done about improving that transparency and accountability. If there are not going to be reasons, the parliament might as well delete that out of the act. I would oppose that, but that is the state in which things operate at the moment. The parliament has quite properly required reasons to be given in these redistribution processes. It is about time that those who conduct the redistributions are required to do just that. They impose that upon us. Frankly, if any of us fronted up at a redistribution commission or an augmented commission and asserted a proposition with the same flimsy statements that they use to underpin their final determinations they would throw us out on our ears within 32 seconds. You would not last a minute. Maybe the

parliament should assert a little bit of that democratic process upon those who drew up these boundaries.

CHAIR—On that issue, we will take further questions. I know that Senator Brandis and Senator Mason have some questions on the redistribution.

Mr DANBY—I will ask my last question. Thinking out loud for the committee—I am interested in you reaction to this—what would you think if we were to ask the Electoral Commission to get some legal advice on whether redistributions that they have done are compliant with the act in terms of them providing reasons? What would you think of the idea of calling the redistribution committee and augmented commission, once the Electoral Commission has provided us with that advice, before this committee to reflect on whether they are compliant with the act?

Mr Bevis—I think that would be a useful first step. There are some lawyers on the panel in front of me on the committee and they may have a view about whether or not what is published complies with the act. I have to tell you that—as a matter of commonsense, and I am not a lawyer—because it so demonstrably fails to comply with the act, I did make the suggestion that we should look at the possibility of requiring the redistribution committee, at the time it publishes its reports, to also publish a certification from an appropriate legal authority, whether that is Crown law or someone else suitably qualified, to say, 'Yes, this meets these provisions of the act.' A requirement in the act like that would provide some enforceability to the clause that is presently there about reasons. As things stand at the moment, the act says that reasons are to be provided. They are not. The only way in which you can enforce that is to go to the courts in a lengthy and costly experience to try and have that process enforced. In the time lines that we are talking about, redistributions usually occur within the 12-month period before the next election. I do not know anybody who is really going to divert that much energy and resources to that task—nor should they have to.

Senator BRANDIS—I want to pursue that with you, Mr Bevis. I do not at all disagree with your sentiment, by the way, but I have just been looking at the act and perhaps there is something that I am missing here. Do you have a copy of the act?

Mr Bevis—I do not.

Senator BRANDIS—Is there a spare copy of the act in the room? Could Mr Bevis perhaps be shown it? On a quick scan of the act, as far as I can see there are two places which provide an obligation to provide reasons, and they are section 67, which deals with the stage of the process at which the redistribution is in the hands of the redistribution committee, and then section 74, which deals with the ultimate stage of the process in which the redistribution is in the hands of the augmented Electoral Commission. What strikes me as a little surprising, particularly having heard your evidence, is that section 67 imposes an obligation on the redistribution committee to state in writing reasons for the redistribution. Do you see that?

Mr Bevis—Yes.

Senator BRANDIS—Section 74, which is the ultimate stage of the process, imposes an obligation on the augmented Electoral Commission to state in writing its reasons for the determination made under subsection 73(1). Do you see that?

Mr Bevis—Yes.

Senator BRANDIS—Section 73(1) is the provision that mandates the augmented Electoral Commission to publish its final determinations—that is, the names and the boundaries. The objection process at that stage is dealt with by section 72. There is nothing in that that I can see on a quick reading that obliges reasons to be given as part of the consideration of objections. If I can take you to section 73(8), it says:

The augmented Electoral Commission may, when it makes a determination under subsection (1), make a public announcement as to:

(a) the substance of its findings or conclusions concerning the initial objections and any further objections; and

(b) its determination.

I cannot immediately see anywhere else in the act that characterises the nature of the obligation in relation to the treatment of objections other than section 73(8). Is there something else, do you know?

Mr Bevis—No. They are the sections that I would have referred to.

Senator BRANDIS—You obviously read these statutes in their entirety, but section 74 only imposes an obligation to provide reasons in respect of the determination under section 73(1)—that is, the publication of the treatments—and not an obligation to provide reasons in relation to the disposal of objections. Firstly, that conclusion seems to be further assisted by section 73(8), which imposes no obligation at all. It is facultative. It says it 'may', not that it 'shall'. Secondly, what it may do is announce the substance of its findings or conclusions. So it specifically avoids providing that there should be a statement of the reasons; merely a statement of the conclusions.

Mr Bevis—The—

Senator BRANDIS—Sorry to cut you off; I am going to invite you to respond to all of that. It seems to me that, if that is a correct reading of the act, there is in fact a lacuna in the act—that is, there is no section that says the commission shall provide reasons for its determination in respect of objections. If that were so, I take it that you are urging this committee to recommend that that be reformed.

Mr Bevis—I think there are two areas: reasons required for its decisions and reasons as to why it has come to a finding in relation to an objection. In respect of the first area, I would assert that the act requires reasons to be given, and it does not.

Senator BRANDIS—But where?

Mr Bevis—In terms of the augmented commission, it may be that there are some—

Senator BRANDIS—It almost specifically directs not to.

Mr Bevis—There are some loopholes that read down section 74. But section 67, which is the original determination of the redistribution committee, does state that the redistribution committee 'shall state in writing its reasons for the proposed redistribution made by it under' et cetera.

Senator BRANDIS—Yes.

Mr Bevis—That is stage 1, if you like, of the process. And it fails at that point. Reasons are not provided at that point. Hence my exchange with Trevor Morling on the last occasion we had a redistribution.

Senator BRANDIS—Just to make sure I understand what you are saying: at this point you are not talking about the disposal of objections at that point. You are talking about the recommendation embodying the original determination?

Mr Bevis—Correct.

Senator BRANDIS—Then I think it is plain English that section 67 does require reasons to be given, and if they were not there was in that instance a plain breach of that obligation.

Mr Bevis—Yes. That is my contention.

Senator BRANDIS—All right. But I thought you were also talking about the giving of reasons for the disposal of objections.

Mr Bevis—There is the second point, which is that after that first determination is made by the redistribution committee there is, as we all know, an opportunity for people to list objections to that finding. I would have argued that the augmented commission, as section 74 says, 'shall state in writing its reasons for the determination made by it under subsection 73(1).'

Senator BRANDIS—Yes. And subsection 73(1) is the ultimate determination.

Mr Bevis—That is right.

Senator BRANDIS—The point I was making to you is that the treatment of objections is dealt with quite separately and not characterised as a statutory obligation by 73(8).

Mr Bevis—I do not think there needs to be an obligation to explain why every objection is not agreed with or to deal with every objection that is received. Quite frankly I think that would be an onerous thing to place upon the process. But, by the same token, the commission determines that a number of objections are serious and has hearings like this, takes them under close scrutiny and comments on them in its final report. I think there does need to be greater emphasis placed by the parliament on requiring the augmented commission to give reasons in relation to substantial objections—and I know that is an open-ended opportunity for people to skirt around that, as well. But there is separately the requirement that, in making its final determination, it is

also—I believe—required to state reasons for that final determination. It strikes me as not a reason to say, 'On balance we think we should do this.'

Senator BRANDIS—I agree with you.

Mr Bevis—That is a broad statement that leads you nowhere. It may well argue, and possibly correctly, that under the act it has no obligation—in my case, for example—to say why it thought my submission was right or wrong.

Senator BRANDIS—Was your submission a comment to the committee or an objection?

Mr Bevis—Mine was an objection.

Senator BRANDIS—If that is the case then I think the committee was right, frankly.

Mr Bevis—Sure. It may well not be obligated to comment upon my objection. But, as Trevor Morling commented when I raised the matter with him in the hearings dealing with the objection, the determination of the augmented commission will be accompanied by reasons—as I believe the act requires it to be. It may well be that the reasons it set out do not go to why it did not like my objections. But my point is that the final determination gave no reasons for anything.

Senator MASON—Mr Bevis, when you speak of reasons you mean section 73(4)(b). Are they the reasons you mean?

Mr Bevis—They are really the reasons required by section 74 to be given in relation to the augmented commission. Bear in mind that we are talking here about two determinations and reasons required at both stages under the current act. It may well be that the act should be changed and there should be a greater requirement for transparency and reasons to be given. But just looking at the existing act, without seeking a change in the existing act, reasons are required when the original decision is made by the redistribution committee; they are not. Reasons are required to be given by the augmented commission as to its determination in the final statement; and they are not.

There is a third question that Senator Brandis has raised, which is a fair interpretation, I suppose, of some of the things I have said—that is, that the augmented commission should have some obligation to give reasons as to how it is handled or why it has come to the conclusions it has in respect of major submissions. As I said, I would not impose that obligation on it across the board because that would be crazy, given the sorts of submissions that come in. Frankly, where a submission is significant enough for them to hold hearings, take evidence and make comment on it—

CHAIR—Can I interrupt for one second. We have gone quite a bit over time but this is an important issue and—just so other members know—one that I would be happy to talk about for as long as committee members have questions. It is an important issue of transparency in terms of our democracy. So, if you have time, Mr Bevis, I am happy to go on for a bit of time.

Senator MASON—I asked that, Mr Bevis, because it is section 73(4)(b). They are, in a sense, the criteria that the augmented Electoral Commission has to consider—things like community of interests, means of communication and so forth. Those criteria should be addressed specifically.

Mr Bevis—Yes. I commented before that people who make submissions set out reasons. The reasons of all the serious submissions go to the criteria that the act stipulates must be taken into account. As I said, they have changed over time. There used to be a requirement, for example, that the numbers of electors dislocated was in fact a primary criterion, but that is no longer the case. So these have changed over time. But you are absolutely right, Senator; they are the criteria against which people making submissions are obliged to make their submission, but the augmented commission and the redistribution committee itself are also obliged to take account of them.

Senator BRANDIS—It really applies also to having regard to, though they are not obliged to give any particular weight to, all relevant submissions made to them.

Mr Bevis—They are.

Senator BRANDIS—But against those criteria.

Mr Bevis—But at the end of the day they have to make a determination that conforms to the criteria the act sets out. The clause to which Senator Mason has referred is the relevant set of criteria in the act at the moment. In fact, on this occasion, one of the things I made comment on was that in their original determination the redistribution committee referred to criteria that are not in the act. To the extent that they gave any reasons, they referred to things that were not in the act—for example, local government boundaries. The act does not require local government boundaries to be taken into account in drawing federal electorates.

Senator BRANDIS—You could argue that section 73(4)(b)(i)—

Mr Bevis—Except 'community of interests'—

Senator BRANDIS—You could say that local government boundaries are strong evidence of boundaries of communities of interest.

Mr Bevis—In some parts of the country that would be a pretty good argument to uphold. In metropolitan areas, I think it is dodgy. Given that local—

Senator BRANDIS—Sure, but my point is that 'community of interests' is not a term of—

Mr Bevis—That is true, but given that local government boundaries exist at the whim of state governments I am not sure the Commonwealth should cede to the states that opportunity.

CHAIR—Particularly at the moment.

Mr Bevis—I am sufficiently democratic enough to hold that view, and I expressed it to the augmented commission during the previous hearings because I think it is a flawed basis upon which things should be dealt with. I give that as an example to illustrate that to the extent that

there was any indication given in the original redistribution committee's decision last time here in Queensland they actually referred to local government boundaries.

Senator MASON—It was in the city of Brisbane.

Mr Bevis—Yes. Local government boundaries are not a criterion set out in the act.

Senator BRANDIS—No, but for the reasons I gave a moment ago that does not strike me as a particularly outrageous thing to do. I would have thought it was commonsense. They would be indicative to a degree—that you could debate about—of communities of interest.

Mr Bevis—I would argue that in metropolitan areas they are irrelevant.

Senator BRANDIS—I come back to the point you make that strikes me as directing our attention to an issue that may well call for law reform. It is plain as can be that there is an obligation to give reasons under sections 67 and 74. For the process of reasoning I went through earlier and will not repeat, it does not seem to me that either of those sections imposes an explicit obligation to provide reasons in relation to disposing of objections, but your point is that, where objections are of sufficient weight or thoroughness that the commission itself actually has a further hearing to deal with them and consider them, it is surprising and anomalous that there is no corresponding statutory obligation to give reasons for that determination after the process of the hearing has been conducted.

Mr Bevis—I would agree with that.

Senator BRANDIS—I would have thought that perhaps, by putting it in imperative rather than permissive terms, the language of section 73(8) might be the place to look to deal with that issue.

Mr Bevis—On where that is dealt with, I bow to your wisdom, but I agree with the general point you make.

Senator BRANDIS—Thank you.

Mr CIOBO—I will ask a quick question to clarify one point. When there is a redistribution—let us say, for example, the most recent one in Queensland, where they came off the back of a creation of a new electorate—would you envisage, therefore, that every electorate that was affected as a result of the drawing of new boundaries off the back of that creation of an additional electorate would receive explicit statements as to the rationale considered and taken into account with respect to the way in which that is rippled out across the states, so to speak?

Mr Bevis—Is that what you are saying in a nutshell?

Mr CIOBO—Yes. I think when the redistribution committee delivers its report, it is obliged by the act to state why it has a boundary in a particular location as opposed to somewhere else. That is certainly the case for any boundary that has been changed. That is the only interpretation I can give to the requirement under section 67.

Senator MASON—Mr Bevis, perhaps you can help me with this. Under section 75, there are listed documents and so forth that should be forwarded to the minister as soon as possible. That is section 75 (1)(e)(a), which is the written record, if any, of the proceedings that the inquiry held under subsection 72(3). Section 72(3) says that the augmented Electoral Commission shall hold an inquiry into an objection, which we were discussing before. Is that substantial? When those documents were forwarded to the minister in the past were they substantive documents, or were they simply non-entity documents?

Mr Bevis—I have to confess that I have never seen one of the reports that have been forwarded to the minister. Given that the process has been much as I have described it in the last decade or so, I doubt that it is a very effective feedback process, because it is not producing the sort of changes that I think are necessary.

Senator MASON—No, because, in a sense, if that was a substantial analysis by the—

Mr Bevis—I see what you mean.

Senator MASON—That would help fill the lacuna that Senator Brandis pointed out. What you are saying is that it does not fill that gap.

Mr Bevis—It certainly does not to the extent of seeing any change at the coalface, but the document that is referred to there is an eternal one. I have not had the opportunity of seeing it.

Senator MASON—I have never seen such a document that would enlighten the committee or the process, but I just thought I would ask.

Mr DANBY—Has the augmented redistribution committee ever appeared before this committee to discuss principles? I am not talking about getting into minutiae of individual redistributions.

CHAIR—You would need to do it on a state-by-state basis.

Senator BRANDIS—There was, of course, the McGregor royal commission.

Mr DANBY—When was that?

Senator BRANDIS—It was in 1977.

CHAIR—This has been a fruitful discussion. Mr Bevis, to sum up, you are saying that, as a matter of transparency in our democracy, reasons should be given and they should be given publicly and quite openly. If it does not comply with the act, your recommendation to us is that the act should be amended to require it.

Mr Bevis—That is a fair summary.

CHAIR—I thank you for coming. In particular, I thank you for your evidence on the earlier matters to do with postal voting. That is quite valuable. As I said, the secretariat will direct you to some copies of some submissions that are relevant to all the issues that you have raised,

including the issue to do with the confidentiality of postal voting papers and the Melbourne submissions. If you would like to put in a follow-up submission, that would be great.

Mr DANBY—Can we get the volume of forms in particular?

CHAIR—Yes. We have got some follow-up hearings in Canberra the Friday before we resume sitting on the Monday.

Mr Bevis—Thank you very much for your time and consideration.

CHAIR—Thank you for coming and for making the time.

[3.00 pm]

CHERRY, Mr John, Private capacity

CHAIR—Welcome. Is there anything you would like to add to the capacity in which you appear before the committee today?

Mr Cherry—I am appearing as an individual today. I did put in the submission when I was a Democrat senator for Queensland.

CHAIR—We have got your submission. It has been numbered 96, the same as a once-famous television show. It is authorised for publication. Are there any corrections or amendments you would like to make?

Mr Cherry—I am sure it is full of typos because I typed it myself, but I am too scared to look.

CHAIR—I invite you to make a brief opening statement. We can see that your submission deals with two substantive issues: one to do with the Senate count here in Queensland and another I could colloquially summarise as your view of future redistributions and a few suggestions there.

Mr Cherry—It actually deals with three issues. The fourth issue was me losing the election, but that is a matter I will take up with the people of Queensland rather than this committee!

CHAIR—They are the ultimate committee.

Mr Cherry—Indeed, they are. The third issue is the smallest one and I will deal with it first. It is the suggestion that the committee might consider changing the guidelines in the naming of federal electorates. I noticed the mention of the McGregor royal commission—we will leave that to one side for the moment. I find it anomalous, as someone who studied electoral systems around the world, that we name our federal electorates after people rather than after geographical localities. If you look at the British and Canadian parliaments, you see that they name their electorates after localities. I live in the federal electorate of Ryan. I think most people in Ryan would not be aware they lived in the federal electorate of Ryan, notwithstanding the best efforts of Mr Johnson. It would make much more sense if I lived in the federal electorate of Brisbane west, which would immediately identify to all people who listen to their federal member where they were representing. That is something that the committee should consider. The redistribution committees rely on the guidelines that have come from this committee in the past and it is a matter the committee might give some consideration to. I note that in the report I cited a little bit of evidence about the number of people who know who their federal member is, and it is pretty scary; you would be surprised by it.

The second issue is about Senate voting tickets, which I raised in my report. During the last Senate election, 55 per cent of the people of Australia voted for a Senate not controlled by the government but that is what they got. We need to ask why the electoral system delivered a result

that the people did not actually ask for. Part of the reason comes back to the use of group-voting tickets. These are now used by between 95 per cent and 98 per cent of people in the Senate and they allow for faceless political operators—as I called them in my final speech—to determine where people's preferences go in the Senate. They were introduced in the mid-80s as a means of reducing informal votes, but I believe we should seriously consider whether that is a fair and politically appropriate way of allowing votes to be counted. We should also consider whether we should allow, as I have suggested in here, votes to be allocated above the line or below the line on a full numbering of all boxes basis rather than simply allowing the parties to allocate preferences, because that really does result in outcomes which people did not intend.

I cite two mathematical exercises my office did using the election results for Queensland and Victorian Senate seats. These exercises sought to allocate the preferences as if they had been allocated below the line by voters through the voting system. It is interesting that in Queensland the result for the last Senate seat would have been a dead even heat between The Nationals and the Greens. I suspect the Greens would have just got over the line. In Victoria, it would have been a runaway win for the Greens over the Labor Party. That shows that the system is producing results that the people did not want and the reform of group-voting tickets might be something the committee should think about.

The third issue, which is probably the bulk of the submission, is about redistributions. I was interested to hear the evidence of Mr Bevis. I put in a very long submission to the last augmented committee here in Queensland because I was deeply concerned at the results, which produced a very substantial political bias in favour of the coalition. I come from Queensland—a beautiful state—and we are very sensitive to issues of bias and electoral boundaries because of our experience with the Bjelke-Petersen government over a long period, which I am sure Senator Brandis and Senator Mason remember. I opened my submission with a quote from the Fitzgerald royal commission, which reported in 1989. It said:

> The institutional culture of public administration risks degeneration if, for any reason, a Government's activities ceased to be moderated at the risk of losing power.

That is an important principle when considering the issue of the fairness of electoral boundaries. Nothing is more fundamental than making sure that the government reflects the will of the people. If the will of the people is not reflected in the make-up of the government because of the way lines are drawn on a map, it should concern anyone who is interested in democracy. My submission goes through some of the legal arguments on that issue, because I know there are a lot of lawyers on the committee. It quotes a number of American examples, because I know there are a lot of lawyers with an interest in American matters on the committee.

Senator BRANDIS—The committee is a microcosm of the public.

Mr Cherry—Indeed. There should be more interest in obscure US Supreme Court cases in the public. What comes out of those cases is an increasing interest of the courts in matters to do with electoral matters. Whilst, to date, the High Court has not yet intervened to impose standards of representative democracy in electoral laws other than the implied freedom of expression provisions, you can see from the obiter that I have collected in this submission that it is getting close to that point. When putting together my submission, I received some advice from a

Queensland QC, who said it is getting very close to the stage where the High Court will intervene in these sorts of cases.

I draw your attention to those two most recent cases. The McGinty case dealt with the issue of one vote, one value. A majority of the High Court felt that was not implied by the Constitution; but the obiter for the majority judges in that case, including Justice McHugh, showed that they do acknowledge that it is a matter of degree—there is a point at which the system will fail to deliver the requirements of section 24 of the Constitution: a parliament elected by the people. The most recent case is the Mulholland case, which dealt with the registration of the DLP. I have cited four judges from that case, all of whom concede as a matter of degree that fairness of redistributions will be determined on the merits of the case. So there is some very strong support in the High Court that the committee should be aware of—that this is a matter which is increasingly justiciable, if that is the word.

CHAIR—They will tell you.

Mr Cherry—I am sure they will. I think that is a matter that will eventually end up in the courts. I cite the case of the Queensland redistribution because it is the most recent one that I was involved in. It produced a bias to the government that was quite substantial. In fact, at the last election it was a bias to the government of three per cent across the most marginal seats. The calculation for that is towards the back of my submission. It is done by simply calculating the notional two-party preferred statewide vote required by the opposition and by the government to win the same number of seats. In the calculations on page 24, 25 and 26 for the three states—Queensland is on page 26—you can see that the vote required by the government to win anywhere between seven and 17 seats in Queensland is substantially lower than the vote required by the ALP to win the same number of seats. The average bias across that range of seats is 3.1 per cent.

I put that to the commission because I could see that in their redistribution proposals, which said that the community of interest criterion produced a wide range of varieties of outcomes which they can put in place and suggested that, in applying the community of interest criteria for redistributions, they should choose the one that produces the least biased electoral boundaries. I was interested in Mr Bevis's comments about reasons. I was told—and it is in the committee's report—that no bias was intended in redistribution of the boundaries, and that was the dismissal of my 40-page submission. But I do believe that they should be required by law to always use the community of interest criterion as the primary criterion. I think that is a good one. But, in determining the application that the various permutations, my suggestion to the commission and to this committee is that the commission should always be required to choose the permutation that meets those criteria that result in the fairest possible boundaries—fair to both sides; otherwise, our democracy fails.

I have suggested in my submission some more fundamental changes so as to impose a test of electoral fairness on redistribution outcomes similar to that which exists in the South Australian electoral legislation and some possible ways by which that could be calculated. But the fundamental point I am putting to you is that this committee has not reviewed redistribution processes since 1995. It is clear from your interest in the previous witnesses' evidence that you are looking at that issue again. I think that, given we have had three redistributions in the last

term, some of them producing what I think are dreadful results in terms of electoral fairness, it is time for you to look at this issue again.

CHAIR—Thank you for that opening statement. There are a number of issues there and I know that members and senators will want to question you on some of those. I will start off on the last thing that you were talking about, and this is so that I have got this clear in my head, because your proposal actually surprised me a bit. Obviously you accept that the redistribution is done independently, that it is done on a statewide basis and that it is done according to the criteria laid down in the act, which are principally as to communities of interest and those criteria to do with the other three or four physical areas and the boundaries. You accept that in every single House of Representatives seat, no matter what party you are from, if at the end of that two-party preferred vote you have got 50 per cent plus one you are elected—that is the way our system works.

What you seem to be suggesting is that the Electoral Commission should somehow look at how people have voted in previous elections and try to skew the boundaries based on their last decision. You think that in some way this would make it fairer. At the moment they decide the boundaries based on communities of interest and regions and then the votes fall where they may, and in any event they can change between elections. It seems an odd proposal. It is almost as though you think that unless you have an even number of voters in each electorate somehow this is a curse on democracy. I would put the opposite: in each electorate you have got, within a small margin defined by the act, roughly an equal number of eligible voters voting. They make up their minds separately at each election as to how they are going to vote. To say that the boundaries should be drawn on the basis of past political results or what you might anticipate to be future political results is—and it surprises me to find this—a bit of a bizarre suggestion. It is almost as if the voters should be moved between boundaries within some sort of margin of error.

Mr Cherry—Well, in South Australia they are now, under the South Australian Electoral Act. That was put in place by the Olsen Liberal government in 1990 after the Liberal Party had lost the 1989 election with 52 per cent of the two-party preferred vote. They felt it was absolutely incumbent that after each election the electoral system should be tested for its fairness. So, after each election, under the South Australian Electoral Act it is now tested to ensure that the majority of the vote, as tested by the previous election, would translate into a majority of seats. In answer to your comment, I quote for you Mr Justice McHugh of the High Court:

> Not equality of voting power but the extent to which a political party's vote translates into seats in Parliament is now seen by many political scientists as the surest guide to the fairness of a particular political system.

That is a fundamental point. The way people voted in the past is probably the best predictor of how they will vote in the future, give or take one or two per cent. If you look at the notional swing, and this is another fundamental thing, you see that the average notional swing between elections in this country over the last five or 10 elections has probably been less than one or two per cent. One or two per cent, as any political scientist or any operator in any back room of any political party will tell you, is the difference between winning and losing elections on a seat-by-seat basis. It is true that there are some rare circumstances in which there are big swings. As a general rule, there are not.

CHAIR—That is an interesting comment. Nationally you are right and state-wise you are right, and perhaps your experience as a senator has made you focus on that. But I would put it to you that in regional areas you are quite wrong. Swings in House of Representatives seats vary markedly. We saw that in the last election.

One of the big things with redistributions is some sense of certainty for the community, but you seem to be saying there would be some trigger point beyond which a notional political margin in a seat would require some correction. My good friend the deputy chair is familiar with some of the Labor seats that swung markedly in the last election, and if you look at swings that have occurred in individual areas you see that they may even out to be one or two per cent swings—that is certainly the case. I think the biggest swing nationally we have ever had in a federal election is about five or six per cent. But, particularly in this state—your state—swings in the order of eight, nine or 10 per cent have been known.

The Assistant Treasurer's seat, Longman, has changed hands and I think was as high as eight, nine or 10 per cent at one point, and then he won it on postal votes in the 1998 election. What you seem to be suggesting is that you would like the democracy to behave in a certain way, but what people actually do is make up their own minds. In the House of Representatives elections, margins in seats vary quite markedly.

Mr Cherry—That is why I focus on a systemic measure. The South Australian Electoral Act focuses on a single seat, which is the majority seat. In looking at the fact that redistributions at the federal level are done on a state-by-state basis and not nationally, and because of the state boundaries it becomes very hard, I thought it far better—to pick up your very point—to look at it on a systemic basis and look at the fairness of the system as a whole. That is why in the appendix to my report that suggests it the judgment of fairness is across the percentage of seats that makes up between 40 and 60 per cent: how many seats does a party need to win to gain 40 per cent of the seats in its state, how many does it need to win to gain 60 per cent of seats, and all the seats in between—they are the swinging seats. You calculate the fairness not across a particular seat but across all of them and average it. It is an average measure that I tried to use, because the point you make is a valid one—that is, there will be swings in one place and swings in another.

In Queensland, I think Arch Bevis got a big swing towards him; yet in the neighbouring seat of Petrie there was a huge swing to Teresa Gambaro. These things do even out, but the overall movements tend to be very small. That is why the systemic measures are very important. When you have a systemic measure of a 3.1 per cent bias to the coalition across the middle seats in Queensland, you have to say that system is no longer fair. That is when it has to be changed.

CHAIR—I have one final question and then I will open it up, because I know the senators have some questions, particularly on the Senate vote. In essence, when it is all stripped away, what you are actually suggesting—and I am not sure the public would agree with this—is that, while at the moment electorates are decided on communities of interest, that should be diluted and the electoral boundaries should be decided more on how people vote. So the electorates would not be areas of community interest as we know today but rather simply lines on a map based on the statistical outcome of how they happen to vote as a group.

Mr Cherry—No, what I am saying is that community of interest can be calculated in a thousand different ways. What the current act does and what the commission does is give too much emphasis to existing boundaries. That in itself builds up elements of bias. What I am saying is that, rather than putting so much emphasis on existing boundaries, which were supposed to have been downgraded in the act to be subsidiary—but if you read through any report from the commission you find they are obsessed with existing boundaries—you downgrade that subcriterion and you upgrade a criterion of fairness of the overall result and say to them, 'Apply community of interest but choose the fairest system that produces the least biased outcome.' In my submission there is a little model at the back—I was a bit bored in the early part of this year because I did not have that much to do.

CHAIR—We have no idea why!

Mr Cherry—I produced a system which actually improves—

CHAIR—What part of the submission?

Mr Cherry—It is in the appendix, from page 24 onwards.

CHAIR—You have drawn some maps.

Mr Cherry—Yes, I had a lot of fun one afternoon!

CHAIR—It is based on council areas, really.

Mr Cherry—Yes, LGAs. If you take the Victorian model, there were a substantially reduced number of councils which were split between seats, yet it reduced the level of bias. What I am trying to show there is that you can actually apply community of interest in a way that reduces bias. There are a thousand different ways of carving up a state and meeting community of interest, because that is in the eye of the beholder. My suggestion for the Queensland seats is to put Crows Nest Shire back into a single division and reduce the numbers of splits in places like Bowen Shire. In doing that, you can still substantially reduce the bias in the Queensland states. So I am saying community of interest should stay there but it should be applied in a way that gives more emphasis to the fairness of the final outcome as determined in a systemic measure of bias, rather than giving so much emphasis to existing boundaries.

Senator MASON—You said in your opening remarks and also in comments on page 20 of your submission that there was a 'dramatic overrepresentation' of the coalition in the Senate, given their overall Senate vote throughout Australia. There has been a lot of focus on the Senate recently but, if ever there were any disparity between the overall vote and overall seats won, surely it is far higher in the House of Representatives, in any case, than it has ever been in the Senate. You would agree with that, wouldn't you?

Mr Cherry—Yes. I do not accept the House of Representatives voting system as a whole.

Senator MASON—No, I know. But you would agree with that statement at least, wouldn't you?

Mr Cherry—Yes. That is the nature of a majoritarian system.

Senator MASON—Okay. Let us go back to the Senate. You mention the quota system in the appendix to your submission. There is a quota of roughly 14.3 per cent; to get three quotas or half the six seats, you need about 42.9 per cent. That is the system. Do you think there is something wrong with that, that you can obtain three quotas—which is half the seats or three of the six seats in a half-Senate election—with less than 43 per cent of the vote? What is wrong with that?

Mr Cherry—With three quotas and 43 per cent, absolutely nothing. At the bare minimum, the government would have gotten 38 seats out of 76 at the last Senate, given their vote. I have no problem with that.

Senator MASON—So you are not challenging the quota system?

Mr Cherry—No. Having said that, I would have voted against increasing the size of the Senate in 1984, because I think it works best with odd numbers.

Senator MASON—That was my next question to you!

Mr Cherry—You can blame the National Party for that one!

Senator MASON—Yes! I heard a lecture the other night, given by Senator Brandis just across the way here at QUT. It is interesting that you predicted my next question. I did a quick calculation and if we had, for example, five seats per half-Senate election, we would need about 16.6 per cent for a quota; to win three of the five seats you would need just under 50 per cent of the vote. That is right, isn't it?

Mr Cherry—That is right.

CHAIR—That is exactly right. That is about the quota that is required in the upper house model in Victoria.

Senator MASON—Yes. My point, Mr Cherry, was that you would be winning three out of the five seats, which is 60 per cent of the seats for that half-Senate election, with less than 50 per cent of the vote. It is naturally majoritarian and in fact more majoritarian with odd numbers than with even numbers.

Mr Cherry—Yet it is more democratic. I do not know; you can argue about what is and what is not the best quota. At the last election, the coalition got three outright quotas in every state, so they were sitting on 38 seats. The 39th one came from Queensland as a result of the group-voting ticket system. If there had not been a group-voting ticket system and if votes had been allocated as per the below-the-line votes—an interesting calculation—the best I can come up with is that it would basically have been a line ball on the assumptions in here that the Greens just fell over the line, but it could have easily been 3,000 votes the other way. But it would have been different from the 40,000-vote majority that the coalition got because of the group-voting ticket system. For example, I suspect that liberals for forests voters, whose votes went 100 per

cent to the Liberal Party above the line, went substantially to the Greens below the line—and there are other examples throughout the system.

Senator MASON—I just wanted to challenge the views that, firstly, the Senate had become highly 'majoritarian'—to use your word—and, secondly, that we would somehow be better off if we had an odd number for half-Senate elections.

Mr Cherry—I tend to think you would be. I do not mind the notion that if the government gets 50 per cent of the votes it should get 50 per cent of the seats.

Senator MASON—They get more: that is my point. They get three out of five; they get 60 per cent of the seats with less than 50 per cent of the vote.

Mr Cherry—That is still how the quota works.

Senator MASON—I do have more questions but I know Senator Brandis has questions.

Senator BRANDIS—Mr Cherry, I want to ask you some questions about your criticism of the ticket-voting system and the lodgement of party tickets. In your submission—and I am looking at page 22, towards the foot of the page just beneath the second table; it is page 97 of the book—you say:

This analysis assumes that Ticket votes would be allocated in a similar manner to below the line votes.

That is the reform you are recommending, isn't it?

Mr Cherry—I am recommending that people should be able to allocate their preferences above the line or below the line. It should be compulsory preferential but it can be above the line or below the line. You would recall how many little old ladies got lost numbering between one and 70 on the old Senate tickets in the early 1980s. If you gave people the option of voting above the line and numbering the boxes with their party preference I think that would be a reasonable compromise.

Senator BRANDIS—Perhaps I misunderstood you. When you say there should be compulsory preferential voting above or below the line what you mean is that above the line as well as below the line the elector would be required to exhaust their preference. If, for example, there are 10 different party groups the elector would have to number 1 to 10.

Mr Cherry—That is right.

Senator BRANDIS—What do you do with ungrouped candidates?

Mr Cherry—They still have a box above the line. You can still put a '1' in their box, I suppose. At the moment you cannot vote for an ungrouped candidate above the line, anyway.

Senator BRANDIS—No.

Mr Cherry—You have the option of voting above the line in your party preference or below the line for your candidate preference.

Senator BRANDIS—You basically exclude ungrouped candidates from an above the line compulsory vote?

Mr Cherry—At the moment they are.

Senator BRANDIS—Under your proposal they would be as well, wouldn't they?

Mr Cherry—Pretty much so, yes.

Senator BRANDIS—I understand. Thank you.

Mr CIOBO—I have a question on the notion the chairman was fleshing out with you about having basically a fifty-fifty outcome measured in terms of a fifty-fifty outcome in seats as well—fifty-fifty on a 2PP basis being reflected in a fifty-fifty allocation of seats. My concern with that is that I think it denies three basic facts: (1) that there are different voting patterns among different demographics, (2) that there are different voting patterns among different communities and (3)—and this is most evident in Queensland—that you get very large variations between voting intentions of people, for example, at a federal level and at a state level. It seems to me that an assumption within the modelling you have done is that in order to get an outcome that is, to use your word, 'fair' you need to make sure that if on a 2PP basis it is close to being a fifty-fifty outcome that is reflected in the seats as well.

In reality, in a seat like my own of Moncrieff, for example, where fortunately the Liberal Party secures extremely strong support, there would be marginal seat members in other seats that would, to all intents and purposes, be, for lack of a better term, punished because of the weighting of the Liberal vote in my seat needing to be fleshed out in their seats in order to achieve a more fair balance, as you term it. Is that not correct?

Mr Cherry—It gets harder to achieve an unbiased system with smaller numbers of seats in states, and because distribution is on a state basis we have to be aware, I think, that it is quite easy to do in Queensland, New South Wales and Victoria. It is a bit harder in South Australia and WA and it is virtually impossible in Tasmania, because you just do not have the number of seats. But in Queensland it is very easy. That is why I gave you that little map, which shows how it can be done.

CHAIR—But I am challenging your whole notion of bias—it is not bias.

Mr Cherry—It is bias.

CHAIR—I have in my electorate a high density of coalition voters.

Mr Cherry—Yes, you do, just as—

CHAIR—And so, given that that will weight the vote across the state to the extent roughly of 70 per cent on a 2PP basis for the Liberal Party in Moncrieff, that is going to have an impact on

the weighting when it comes to the 2PP vote across the state. In order for you to try to achieve your so-called fair outcome there would need to be marginal seats whose boundaries you would want to fiddle with in order to make sure that that density would be basically washed out as it was relayed across the state.

Mr Cherry—No, not at all, because your seat is washed out by Griffith, which is Mr Rudd's seat, which is essentially as safe in the other direction. My calculation on page 26 is based purely on the marginal seats, and McPherson is not having that calculation applied because it is in the 40 per cent of safest coalition seats in Queensland. It is weighed out not by a marginal seat but by a safe Labor seat, which is essentially Griffith or Oxley.

Senator BRANDIS—But there is another reason for that in relation to McPherson, and that is because although most federal electorates in the country, I would venture to guess, have one hard boundary—that is, a coastline—McPherson has two hard boundaries—that is, a coastline and a state border.

Mr Cherry—Yes, and the state borders obviously make these calculations a bit more complicated because we have state based redistributions. One of the reasons why I have suggested the measure of bias, if you chose to measure bias, should be based on the number of seats in a state is that obviously the level of statistical acceptance would need to rise, given that you have less scope to shift things around. But it is doable.

Senator BRANDIS—But my point is that your model is only going to be able to work, assuming that it could work at all, if there were complete fluidity of boundaries, and there is not. I have not done the analysis, but I venture to guess that most electorates in this country have one, as I have called it, hard border—that is, a coastline or a state boundary—and some, like McPherson, have two: a coastline and a state boundary.

Mr Cherry—There is actually a multiplicity of outcomes that you can come up with. I think I have shown with my little map that that produces in many ways fewer broken up local government authorities, which is the measure that the commission has chosen for community of interest, yet a reduced level of bias. I did that to show that there is a multiplicity of outcomes under the community of interest criterion. There is no single, fixed set criterion that comes out from that. If you look at the way the boundaries have shifted so dramatically in Queensland over the last four or five redistributions it shows that what you are arguing does not necessarily add up. McPherson can obviously only contract, and with each redistribution it gets closer to the border. Moncrieff obviously picks that up. Then the next seat picks it up and then it starts getting more interesting. But there is a multiplicity of outcomes that you can develop in the middle in terms of community of interest.

CHAIR—But aren't you also ignoring the fact that, in a practical sense, political parties will look at marginal seats that are notionally winnable and invest time, resources and effort into them? So you may get, for example, the governing party not investing significant resources in strong Labor seats and, as a consequence, large primary votes in those seats for the Labor Party. Yet that governing party may invest significant resources in marginal seats and at the end of that process have an outcome where in fact the majority of marginal seats flow to the government, despite the large primary votes in the safe Labor seats. You are completely ignoring that fact. Yes, that might make it appear on the surface that 50 per cent of Queenslanders want the

government retained and 50 per cent want the opposition to be in government but in reality, when you look at the way that election resources are implemented and rolled out across the state—and we know they do have an impact on the way people vote—you are disregarding the actual investment of resources across marginal seats, aren't you?

Mr Cherry—But, in saying that, you are downplaying the decision of all those people across the country to choose a government.

Mr CIOBO—No, I am not. What I am downplaying is that there would be a majority of people in, for example, the seat of Griffith—a very large majority in the seat of Griffith and a very large majority in the seat of Moncrieff—that vote respectively for the Labor Party and the Liberal Party. In no way do I diminish the votes cast in marginal seats.

Mr Cherry—But what I am saying is that in the measurement of the overall fairness of electoral systems you have to do from time to time it should be whether the majority of seats were won by the party with the majority of votes. Our electoral system has produced the wrong result six times since World War II.

Mr CIOBO—I disagree.

Senator BRANDIS—Are you going to ask something on the same point again?

Mr CIOBO—No, I am going on to a different point.

Senator BRANDIS—Can I come in on that? Mr Cherry, are you familiar with an American model called the Dauer-Kelsay index, which is said to be one of the—

Mr Cherry—I have heard it mentioned.

Senator BRANDIS—criteria for determining the fairness of electoral systems?

Mr Cherry—No, I have read through a couple of the American cases. I heard it mentioned in a couple of the submissions but, no, I have not read it myself.

Senator BRANDIS—So you have not subjected the Australian system to a Dauer-Kelsay test?

Mr Cherry—No.

Senator BRANDIS—Thank you.

ACTING CHAIR (Mr Danby)—Can you give a succinct summary of what the Dauer-Kelsay test is—very succinct?

Senator BRANDIS—I could, as a matter of fact.

Mr CIOBO—That will be the most arcane thing in the transcript.

Senator BRANDIS—It is not arcane at all, but I see the chairman approaching the table with a forbidding stare, so I dare not.

Mr CIOBO—I have some questions about the issue of compulsory preferential voting above the line. What is wrong with expecting people, if they want to allocate preferences in a particular way, to do so below the line and, if they choose not to, to outsource their vote to the political party concerned by simply voting above the line?

Mr Cherry—It is fundamentally undemocratic. If you actually asked people, they might not be aware that their vote above the line actually results in their preferences being allocated. I suspect that 95 per cent of people who vote about the line are not aware that when they put a '1' in the box it actually moves from that box. If you are voting for Pauline Hanson, as 4.4 per cent of Queenslanders did to oppose the sale of Telstra, you end up electing a Liberal senator who is actually going to vote for it. They would be very surprised to discover that, I suspect. I do not think that they are outsourcing it; they are not aware of where their vote is going. Give people more control over their vote. I think it makes more sense.

Mr CIOBO—For every person who says that, I can find another person who says it is undemocratic to force people to exercise a preference that they may not have.

Mr Cherry—We have a preferential voting system. We decided over a long period of time that it works pretty well. It certainly works from the point of view of making sure that, at the end of the day, the people who are left standing are the people who were the least disliked of the people available. It is a far better system than the alternative of first past the post—which we saw in the UK, with people being elected with as little as 30 per cent of the vote—or even the French system, which is having runoff elections, because that involves bringing people back for a second election. I am sure Australians would not like that. Of all the alternatives, this is probably the least worst.

CHAIR—I will allow one last question. We are way over time, but it has been good to hear from you.

Mr DANBY—Could you explain what the effects would have been for the last election of the application of the South Australian criteria of bias versus what you say is the Electoral Commission's concentration on community of interest in Queensland and nationally?

Mr Cherry—I have calculated, using my system—

Mr DANBY—What would have been the difference between the six seats, out of 28, that Labor won in Queensland?

Mr Cherry—It comes back to where they put the boundaries, but it does suggest that Labor should have had another seat or two in Queensland. Having said that, it is worth noting that the Labor Party now needs a 51.6 per cent two-party preferred vote to win the next election. So Labor could win 51.5 per cent of the two-party preferred vote and not win government. That, to me, is a democracy scandal just waiting to happen. I accept that this committee, with a government majority, might not see that as being as urgent as I do. But, just as it was somewhat scandalous when John Olsen failed to get elected as Premier of South Australia in 1989, I think it

is scandalous that Kim Beazley was not elected Prime Minister in 1998 and that at the next election we could have a government elected with 48.5 per cent of the vote simply because the Electoral Commission has not done its job in delivering fair boundaries.

Mr DANBY—My last question is something that we have not touched on: the geographic names you suggest are either long or similar. There are multiple Sydneys and multiple Melbournes. How would you stop the confusion, do state electorates have this problem and how would you prevent an overlap between state and federal electorate names if they had the same geographical basis?

Mr Cherry—I do not actually mind federal and state electorates having the same name. If there is a state member for Brisbane and a federal member for Brisbane, to me that makes a lot of sense, but that is just my own personal view.

CHAIR—You do not think it would create confusion?

Mr Cherry—It creates a lot more confusion having a member for Ryan when no-one knows where Ryan is. I think it is much easier to have a state member for Brisbane city, Brisbane central, Brisbane west, Brisbane north or Brisbane south. That makes sense to me. It gets a bit harder in Sydney and Melbourne, where the areas are that much bigger, and that is why I suggested using local government names. In the Canadian parliament they always put the name of the city in the first part of the name of the electorate. So one of the seats in Edmonton is Edmonton Mill Woods Beaumont, for example. A similar thing is done in the UK. I thought that might be a nice way of identifying that someone is from Sydney. The member for Melbourne Ports is obviously the member for Melbourne Ports, and having a member for Melbourne north would be better than having a member for Calwell or whatever it is. That, to me, makes sense and that is what works in the UK and Canada.

CHAIR—Thank you very much for coming along today. Your submission will certainly be considered on its merits, along with the other 164 submissions we have. It is good to see you again and, just on a personal note, good luck with your new career with the Queensland farmers.

Mr Cherry—I had better get back to them.

CHAIR—Have you begun?

Mr Cherry—Yes, it is day 3 today. I have been a bit longer than I had intended.

CHAIR—Thanks a lot.

Resolved (on motion by **Mr Danby,** seconded by **Senator Brandis**):

That this committee authorises publication, including publication on the parliamentary database, of the transcript of the evidence given before it at public hearing this day.

CHAIR—On behalf of the committee, I thank all of the witnesses who have given evidence at the public hearing today.

Committee adjourned at 3.42 pm