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JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

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

THURSDAY, 7 JULY 2005

TWEED HEADS

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**JOINT STANDING COMMITTEE ON
ELECTORAL MATTERS**

Thursday, 7 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: Senator Brandis and Mr Ciobo, Mr Danby 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

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Committee met at 9.44 am

CHAIR (Mr Tony Smith)—I declare open this public hearing of the Joint Standing Committee on Electoral Matters inquiry into the conduct of the 2004 election. Today in Tweed Heads we will hear from four people who will discuss issues relating to the 2004 election in the Richmond electorate, one of the most closely contested electorates in the country at the last election. We are hearing from representatives of the National Party of Australia, from the Greens, from a local constituent here in Richmond, and from the Australian Electoral Commission. I should point out for the sake of transparency that the Labor federal member for Richmond, Mrs Elliot, was invited to appear or to send any representative from her party. So, too, was the candidate for liberals for forests. Both declined that invitation to appear or to send a representative. We will make that same offer to Mrs Elliot to appear at our later hearings in Canberra.

To date the committee has received 165 submissions. Many of these were detailed, well written and self-explanatory. Accordingly, the committee does not need to hear from everyone who has made a submission. Submissions have raised numerous issues, which we are examining carefully. While examining the submissions we have identified a number of issues, about which we seek to take additional evidence in this second round of hearings.

I would like to thank all of the witnesses for appearing today. I remind all of you 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 that may be regarded as a contempt of parliament. Of course the evidence given today attracts parliamentary privilege. Finally, because we are running to a tight schedule we need to stay as close to the program time for each witness as possible. If anyone has any queries they wish to raise, please see the secretariat staff.

[9.46 am]

SOCHACKI, Mr Andrew Nicholas, Chairman, Richmond Electorate, The Nationals

CHAIR—Welcome. We have received your submission. I understand you will be speaking about matters in that submission and related events that occurred in the electorate of Richmond at the 9 October election. I would ask you to make a brief opening statement summarising some of the key issues as you saw them before we open it up for questions.

Mr Sochacki—When you say ‘my submission’, you mean the submission of the National Party?

CHAIR—Yes. In your capacity as appearing on behalf of The Nationals.

Mr Sochacki—Certainly. I have prepared a written statement, which I propose to read rather than ad lib. I am referring to submission 92, which was prepared by Andrew Hall, the Federal Director of The Nationals. I wish to concentrate on three issues vis-a-vis that submission—namely, liberals for forests, which is a party which is registered, I believe, in WA and in New South Wales as well; the ability to abuse the electoral system by provisional voting; and some general issues. Naturally, I am referring to the federal campaign of 2004. The underlying thing is that I wish to see the integrity of the voting system not undermined by people looking to exploit weaknesses of available options in the system. However, before I move to these issues I would like to take a few moments to acknowledge the fact that we have an independent organisation administering the process of election—that is, the Australian Electoral Commission. I think it is paramount that the government provide the AEC—if I may refer from now on to the Australian Electoral Commission as the AEC—with a framework so that they are, as best possible, beyond question with respect to voting and the integrity of the electoral system. The focus, as I have stated already, of my representation today will be on two specific areas, as well as some general comments. The specific areas are liberals for forests, which is a registered party, and the ability to abuse the electoral system by provisional voting.

I will take you, Chair and members of the committee, to item No. 1 in my submission, liberals for forests. Briefly, by way of history, in 1999 in the New South Wales state election we had the infamous ‘tablecloth’ for the upper house voting ticket. This saw over 60 parties being registered and running for positions in the upper house. As a result, one group was elected with a vote, as I understand it, of less than one per cent. I stand to be corrected on that, but I think it was less than one per cent. What occurred at this election attacked the very proposition of informed voters making informed decisions. These circumstances were confusing at the ballot box and acknowledged as such by the New South Wales state government by way of moving to tighten the registration rules that apply to political parties. I note here that the federal party registration system today still only requires either one member of parliament or 500 people to be members of a political party with an acceptable constitution. This is less than what is required in New South Wales to register a state party; that requires at least 750 people. To me this is a great anomaly.

In the 2004 general federal election we saw liberals for forests running in mostly Nationals seats. These were all Nationals seats, I think, except for two which were Liberal contested or

Liberal seats. Add to this the fact that the how-to-vote cards that liberals for forests produced were designed to look similar to either the Nationals' how-to-vote cards or the true Liberal Party how-to-vote cards. The branding that was supplied at polling booths—namely, on things like the chest area of T-shirts and on hats that were worn by the booth workers—had on them 'Liberals' in very large type and the words 'for Forests' in very small type. This branding, in my opinion, was designed like the how-to-vote cards to make it unclear whether the voters were voting for the true Liberals or for liberals for forests.

Senator BRANDIS—What colour were the T-shirts?

Mr Sochacki—Some were blue and some were yellow. Blue, I believe, is predominantly the colour for Libs, whereas it is green or yellow for The Nationals at election time and on how-to-vote cards. In fact, following the election, a reasonable number of people called either our campaign office or the then sitting member's office to say that they were confused when they voted: they thought they were voting for the Liberals when, if you follow the preference ticket, their vote ended up with Labor.

I add to this my conversations with booth workers and my own experience during the day, for I was there from four in the morning until 10 at night. It does not mean that they were handing out how-to-vote cards from four in the morning till 10 at night, but from the commencement of voting, which was I think eight in the morning, till six at night, the liberals for forests workers were simply saying, 'Vote Liberal'. The words 'for Forests' were never heard; it was simply, 'Vote Liberal'.

An interesting point is that, as far as I am aware, all the booth workers in Richmond were backpackers. They were certainly backpackers where I was and on the other booth that I visited, because I spoke to those young people—and they were all young people. Most of them spoke with an accent, be it Canadian, American, German, French or Dutch, as it transpired, but they did speak English. They were backpackers from other countries and were neither citizens nor in any way eligible to vote. Having people handing out how-to-vote cards to assist voters when they are not eligible to vote themselves does not appear appropriate to me. I think they should be people who have an interest, even if they are under age, in this country and in our voting system.

It is my understanding that many of these workers were on tourist visas. As I say, it is only my understanding or my assumption; as they told me they were backpackers, I could only assume that they were on tourist visas. Those visas did not allow them to work while in Australia, but they were actually being paid for their time on the booths: the three young people I spoke to were getting paid \$100 for the day. The people organising these workers would have known, I submit, that it would have taken too long to get anything done by that day if Immigration had been involved—and I am stating the obvious.

I undertook some research following the election and found that, while the Electoral Act now prevents the registration of unaffiliated parties using names of other parties in their names, it still does nothing to address those that were registered before that time. I think, having seen what I saw at the last election, that allowing parties that are not affiliated to use parts of another party's name is distorting, inappropriately affects voters when they vote—especially the older ones, without being prejudiced, but I think also the younger voters—or at the very least makes it unnecessarily confusing for any voter. This should be addressed before the next federal election.

Our campaign office received a number of letters from people who said they had been deceived. With liberals for forests receiving some 1,417 votes in Richmond, without such ‘deception’, dare I say, of the voters, the result may well have been truly different. I can talk about the Richmond campaign from being involved with it intimately and directly. I note that liberals for forests workers undertook similar tactics in the federal division of Page, which is just south of the federal division of Richmond. There, they received some 2,155 votes. Although this did not end up being a tight seat, the point here—vis-a-vis Richmond, Page and anywhere that liberals for forests fielded a candidate and handed out how-to-vote cards—is the integrity of the system. The integrity of the system should not be open to question.

I would like to note, with regard to party name registration, that the Australian Democrats were registered well and truly before the Christian Democrats and, as the Australian Democrats refer to themselves as ‘the Democrats’, this naming arrangement made it confusing for them as well as the Liberals. Note that the bar is only 500 members federally, yet it is 750 in New South Wales. We are talking about one state vis-a-vis the whole of Australia. It is 500 in Queensland, 500 in Western Australia and, I think—and I stress ‘think’—500 in Victoria. It is ludicrous.

CHAIR—I will just interrupt you briefly. We want to have enough time for questions. We are aware of the different regulations.

Mr Sochacki—I can speed it up.

CHAIR—If you could get to your point on provisional voting and any of the issues pertaining to Richmond, we want to hear about them. But, as far as comparisons throughout the country, we are aware of them and we have got them in the submission as well. I want to allow enough time.

Mr Sochacki—I just thought I would give you a full—

CHAIR—Yes, but I want to allow enough time for members to ask you questions.

Mr Sochacki—That is fine. You are the chair. As I go on, please interrupt me at any time and just say, ‘Right, we know that.’

CHAIR—No, we will let you finish your opening remarks and we will ask some questions.

Mr Sochacki—Okay. Provisional voting: it is my understanding that at the moment the rules surrounding provisional voting would allow an unscrupulous person or persons to enrol today in a seat—let us say a marginal seat such as Richmond—by picking an address at random and getting a compliant witness to sign their form. They may never actually live in the seat and be removed from the roll by the AEC for failing to respond to correspondence from the AEC. So long as they do not enrol in another seat, come election time they can do a declaration vote that is a provisional vote and have their vote counted in the seat. Let us say the seat of Richmond, as it happened here. While this practice is illegal, unethical and, I am certain, not one that is undertaken by a large number of people, it concerns me nonetheless that the ability to do this remains—especially in marginal seats such as Richmond.

I am not aware of the investigation undertaken by the AEC in Richmond, nor am I aware of how extensive this investigation was, yet I remain seriously concerned that such a practice has

the potential to occur. The way I see it, it is the responsibility of voters to ensure that they are enrolled to vote where they live and it is not appropriate that, once the AEC has taken somebody off the roll due to failing to respond to the AEC's request to verify their residence, they can simply be put back on the roll and counted as a vote on the day of the election.

Let me be clear: I do believe everybody has the right to vote—and I anticipate some questions in respect of my comments—and this right should not be impinged on, but it is the responsibility of the voter to ensure their details are in order prior to going to vote. It is fair that the AEC should be expected to take steps to assist the process of keeping people on the roll, but to leave the system open to potential abuse and rotting, as I outlined above, attacks the very heart of the integrity of our voting system.

Provisional voting should be removed as it stands and in its place we need to get people better informed by the AEC or the government—but preferably by the AEC—of their need to keep their details in order. The number of provisional voters was high in the Richmond area, certainly higher than they were during the election before. There were some 711 formal provisional votes in Richmond in 2004. If any of these—and I stress 'any'—were unscrupulous voters, as I have outlined above, maybe we would have had a different result in Richmond.

There are three points I would like you to remember vis-a-vis provisional voting: (1) people have the responsibility to keep their details up to date; (2) the AEC does regular advertising to get people to keep their details up to date but maybe more can be done here, and I suggest more can be done and perhaps should be done; (3) there is a gap between the time when the election is announced and when the rolls close. There is ample time and opportunity for people to check their details and this is something that they should do. This is not about disenfranchising voters; it is about tightening up the potential loopholes.

It is interesting to note that in Richmond when there was a close contest, as there was in 1988 and 2004, the number of provisional votes increased. I have some more comments, if you are interested, which will take me only a few minutes and which deal with general issues.

CHAIR—I want to thank you for the trouble you have gone to, which is very good, in putting forward that detailed submission. We want to ask you some questions in the remaining time. What I would invite you to do, if you are happy to, is submit the rest of your paper either today or over the next few days as a supplementary submission which we can take on board, and all of that evidence will be taken into account. But, if there are simply general issues, we can take those into account in the consideration as we go.

Mr Sochacki—But I am dealing here with general issues to do with postal voting, postal votes not reaching people, et cetera, and also unauthorised material being displayed in at least one booth in Richmond saying 'Larry Anthony is a war criminal.'

Senator BRANDIS—Say that again.

Mr Sochacki—At the Alstonville booth there were placards as long as this table which said 'Larry Anthony is a war criminal.'

CHAIR—Before we get to that—because you raised a number of important issues in your submission earlier—were they authorised or unauthorised?

Mr Sochacki—Unauthorised. The issue was taken up with the AEC officials there but they could not get in touch with a Mr Averay Somebody and a number of hours passed before they were eventually removed.

CHAIR—We might go to questions. I make that invitation to you to table your statement as a supplementary submission.

Mr Sochacki—I may do so later. I have scribbles and notes, et cetera.

CHAIR—That is fine; that is no problem. You can see the secretariat staff on your way out and that can be arranged for any time in the next days or week or so. I would like to start the questioning and cut straight to the heart of the issue without talking around it. You have mentioned the liberals for forests how-to-vote card. I want to put you a couple of very simple propositions. Proposition 1: it is a fair assumption that, in the vast majority of cases where somebody took a how-to-vote card which they thought was a Liberal Party how-to-vote card, they would not at all think that their preference would end up with the Labor Party. If there is a black-and-white distinction in Australian politics it is between those two parties. Would you agree with that proposition?

Mr Sochacki—Yes, most people thought they were voting for Liberals and preferences would flow to Larry Anthony.

CHAIR—And the seat was decided by some 300 votes. You said there were 1,417 votes for liberals for forests, which I understand is correct. What I put to you is that the vast bulk of those people did not think they were voting for the Labor Party in our preferential system but at the end of the day they did vote for the Labor Party. They did so unknowingly. I would put it to you that, given the margin of the election, that deception decided the result. Would you agree with that?

Mr Sochacki—Most probably.

CHAIR—You would agree that Justine Elliot, now the member for Richmond, was elected partly by people voting for her without their own knowledge—by accident?

Mr Sochacki—Yes.

CHAIR—My contention is that, as the member for Richmond, she did not on election day actually receive the majority will of the people. She might have received the majority of votes, but part of that majority was made up through deceptive how-to-vote cards for liberals for forests.

Mr Sochacki—Yes, certainly.

CHAIR—You gave some important evidence on the people handing out how-to-vote cards for liberals for forests, and this has been reported in the local newspapers here. You said that they

were paid in cash—and you have reaffirmed that evidence yourself today—and that you have spoken with people who handed out how-to-vote cards and who were paid in cash to hand out those how-to-vote cards and that they were mainly backpackers. I have seen articles in the Sydney papers and in the local papers here to that effect, and numbers vary from \$100 for a day to \$200 in the *Sun-Herald* of 10 October.

At any point in your discussions did those backpackers inform you whether the people who had paid them were complying with Electoral Commission laws or whether they were complying with tax office laws for payment? At any point was it made clear to you that they had been employed for the day and that there were obviously legal obligations upon the people paying those polling officials both in terms of declarations to the Electoral Commission and in terms of compliance laws with the Australian tax act?

Mr Sochacki—I can give you direct evidence, not even hearsay evidence, that three backpackers who handed out how-to-vote cards for liberals for forests—I have spoken to all three—were saying to people, ‘Liberals, Liberals,’ and not a word about ‘for Forests’. I have spoken to them. Having ascertained that they had accents—mind you, I have an accent too, but I am an Australian—I said: ‘Who are you? Where are you from?’ And, cutting to the chase, as you say, they said, ‘We’re backpackers.’ I very quickly said, ‘You’re being paid, aren’t you?’ They said, ‘Oh, yes.’ ‘How much?’ ‘\$100 per day.’ Whether it is cash or cheque I do not know. As a lawyer, I cannot presume that it was cash.

CHAIR—Let me quote something to you from the *Sun-Herald*, which is a reputable newspaper in Sydney, the day after the election—and this is from a senior journalist at the *Sun-Herald* who has no axe to grind politically:

Under questioning, some micro-party helpers admitted they were to be paid in cash for the day’s work, most of them receiving \$200.

Roughly how many polling booths are there in Richmond? Seventy? Two hundred?

Mr Sochacki—I should know. Close to 100.

CHAIR—Were liberals for forests at most polling booths?

Mr Sochacki—At most, to my understanding—the largest ones, anyway.

CHAIR—Let us err on the side of caution, which I always like to do. Would that one person being paid \$200 for the day perhaps be one person at each booth for the whole day, where they would put in a whole stint? Would that be the average?

Mr Sochacki—We had three at the most.

CHAIR—So in total there might have been 40 or 50 of them?

Mr Sochacki—Working it out statistically, I would say it would be more—what was the figure that you mentioned, Mr Chair?

CHAIR—Thirty, 40 or 50 individuals?

Mr Sochacki—No, I think you could triple that number.

CHAIR—150?

Mr Sochacki—Let us say 100 or 150.

CHAIR—Let us be modest and say 100. The *Sun-Herald* says they were receiving \$200 in cash.

Mr Sochacki—My information was \$100.

CHAIR—Okay, \$100. Let us be modest here. That is a lot of cash floating around on election day in Richmond, isn't it?

Mr Sochacki—Yes. Richmond was important.

CHAIR—So that is 100 people times \$100—

Mr Sochacki—A lot of money.

CHAIR—in cash. They were to be paid at night, at the end of polling day, were they?

Mr Sochacki—I did not ask.

CHAIR—At no point did they say who was paying them?

Mr Sochacki—I did ask, and they said, 'Our employer.'

CHAIR—That is important because this committee could pursue that employer to see whether they fulfilled their obligations to the Australian Taxation Office and the Electoral Commission—but they did not say who that employer was?

Mr Sochacki—No. They simply said, 'Our employer.' They were intelligent young people, and they were quite cagey about the whole thing.

CHAIR—Those are serious issues, and I thank you for your evidence. The liberals for forests candidate has refused to turn up today—actually, 'refused' is too strong a word, because that presupposes that we have been able to locate her. I think this committee has had a similar problem to that of the local newspaper here, which could not locate the liberals for forests candidate before the election. Have you ever seen the liberals for forests candidate in person?

Mr Sochacki—No.

CHAIR—Are you utterly convinced the liberals for forests candidate exists?

Mr Sochacki—Fiona Tyler? I have no idea.

CHAIR—Does anyone know if she lives in the area?

Mr Sochacki—My research shows that she lives at North Sydney.

CHAIR—There are a lot of forests in North Sydney, aren't there? Maybe that was the case 100 years ago.

Mr Sochacki—It is a leafy suburb.

Mr DANBY—After you have asked your questions so comprehensively and in such a prepared way, Chair, I will take up questioning Mr Sochacki. I assume you were at various polling booths and saw the Liberal and National Party workers there when the 1,500 people voted for liberals for forests.

Mr Sochacki—I was predominantly at two booths. Since 1984 I have been what we call in The Nationals the captain of the Mullumbimby booth, which is in Byron Shire. Byron Shire is what we in The Nationals call tiger country. At one stage, when I received a call about liberals for forests, I drove over to Ocean Shores. People were complaining to me very bitterly about liberals for forests.

Mr DANBY—Were they your booth workers who were complaining to you bitterly?

Mr Sochacki—Yes.

Mr DANBY—As voters went through, did your booth workers and the Liberal booth workers—

Mr Sochacki—When you say 'Liberal booth workers' do you mean liberals for forests?

Mr DANBY—I am sorry—your booth workers, Nationals booth workers. Did they point out to voters as they came in that liberals for forests were not the Liberal Party?

Mr Sochacki—Yes. I am sorry; could you go back? Did you say, 'Were they pointing it out to the voters'?

Mr DANBY—Yes.

Mr Sochacki—No.

Mr DANBY—So National Party people on every booth stayed entirely silent?

Mr Sochacki—We did not point it out to the voters. That is incorrect behaviour. We spoke to the liberals for forests booth workers and said: 'You are not Liberals. You are breaking laws.' But they would not move. We could not go up to 100 people in the queues at a time saying, 'Don't vote for them.' That is inappropriate behaviour; you could not do that.

Mr DANBY—So you are saying that none of the National Party booth workers made the point that these people were giving their preferences to the Labor Party to any of the voters who came in on any of the booths in the electorate of Richmond?

Mr Sochacki—Let us put it this way—to the people that I knew, clients, friends, football mates et cetera, I did say: ‘They are ratbags. They are nothing to do with Liberals at all. It appears to me this is a scam.’ At that stage it just appeared to me as a scam. But I could not go up to Mr Michael Danby, whom I do not know, and say, ‘Sir, don’t vote for them. They are a fraud,’ and stuff like that. It is not done.

Mr DANBY—I have a long experience in working on polling booths, too. I find it very unusual that no National Party person would point out that, if you wanted to vote for Larry Anthony, the only way you could do it was to follow your ticket rather than that of liberals for forests.

Mr Sochacki—That goes without saying. When you handed out the Larry Anthony one, you used different phrases depending on who turned up—a redneck, an academic or a sandal-wearing greenie. Horses for courses; you give a different spiel. I have lived here for 25 years and people know me. They know my politics and my background. Sometimes you do not have to say anything.

Mr DANBY—Just you being there is enough for them.

Mr Sochacki—Precisely. I could simply say, ‘That’s my boy. Vote for him. She’s right.’ If I do not know someone—let us say you were there and you were voting—I would say rather elegantly, ‘Would you mind taking one for Larry Anthony?’ If you say no, I walk away. I do not argue with you that you are to vote for Larry Anthony. By the same token, I would not argue, defame or slander another organisation by saying, ‘I suspect that they are a front for another political party,’ because I do not know.

Mr DANBY—I was not suggesting that you defame or slander anyone, but I find it very unusual that the entire National Party apparatus—knowing that this was a marginal seat—was unable to point out to polling booth workers that there would be a consequence of them voting for liberals for forests. You were well aware of how their preferences worked out—this was going to the Labor Party—and that the only way of voting conservative was to vote for Mr Anthony. You are in a political contest; it is the heat of battle. Surely the National Party people were making that point to people and surely voters who were going through knew exactly who they were voting for.

Mr Sochacki—You said that you were involved in politics for a long time and you were handing out how-to-vote cards for a long time. I have been doing it since 1984. I do not know who beats whom, but I think I am older than you and I think that I have been doing this longer than you. I stand corrected if that is not the case.

Mr DANBY—You actually are corrected because I have been doing it since 1975.

Senator BRANDIS—Danby started at a very young age.

Mr DANBY—I still respect you doing it since 1984. That is good experience.

Mr Sochacki—What I am saying, Mr Danby, is that The Nationals simply do not operate like certain other parties, who shall remain unnamed at this inquiry—at least from my mouth—who assume and perform certain tactics that The Nationals would never dream of doing. You just do not go up, on election day, and say, ‘Don’t vote for them. They’re a scam. They’re a fraud. If you are voting for them, you are effectively voting for Labor.’ There is also no time. There is a queue of 100—

Mr DANBY—And they are all standing there and people do not make the point to them that the only way of voting conservative is Larry Anthony?

Mr Sochacki—The point that we make is that the only way to vote is to vote Larry Anthony.

Mr DANBY—Are you saying that none of the people who voted liberals for forests did so in a way that they were conscious of doing it? That all of these people were dupes? That there is not a segment in the Liberal Party that places a higher value on the environment and conservation and thinks that the National Party, in particular, is a little too pro development?

Mr Sochacki—You have the right to ask the question, but I think we are digressing from the issue. I think one of the greenest parties in Australia is in fact The Nationals, because originally it was based in the farming community. If there is anybody who knows how not to degrade land and how to preserve the very way that they earn a living, it is The Nationals.

Mr DANBY—Do the sandal-wearing greenies who come into the polling booth think the same, though?

Mr Sochacki—We are entering a debate which you and I could have over a bottle of chardonnay for five hours.

Mr DANBY—Not one bottle.

Mr Sochacki—Five. Thank you for that.

CHAIR—We will make this the last one because the other two have questions to ask.

Mr Sochacki—Mr Danby, on a serious note, I have spoken to people after the election vis-a-vis liberals for forests. What do I mean by ‘spoken to’? In the area, whether it is Byron Bay or Mullumbimby—maybe not Tweed Heads so much—I am known as Mr National Party. The people were all Nationals. They would come up to me and, using certain vernacular—the four-letter word for physical love—they would say, ‘Who the “four dots” were these jokers, liberals for forests?’ By that time we had truly found out who they were and they would say, ‘Jesus “four dots” Christ, my wife voted for them because she thought that the vote would be a protest vote against Larry but that eventually it would go to Larry.’ That is where the scandalous behaviour of the people behind liberals for forests rests.

Senator BRANDIS—I see you have the National Party's how-to-vote card there at the table and what appears to me to be a photocopy of the offending how-to-vote card. Would you mind handing them to me, please?

Mr Sochacki—Both of them?

Senator BRANDIS—Yes, please. Just to make this perfectly clear: there was not a Liberal Party candidate for Richmond last year, was there?

Mr Sochacki—No.

Senator BRANDIS—So Mr Anthony was the National Party candidate?

Mr Sochacki—Yes.

Senator BRANDIS—But he was also the only candidate of the federal coalition, the Liberal-National coalition?

Mr Sochacki—Yes.

Senator BRANDIS—So he was the John Howard candidate in Richmond?

Mr Sochacki—Yes.

Senator BRANDIS—In your long experience of working in politics, is it apparent to you that there is a substantial element of non-Labor voters who do not make a sharp distinction between the Liberal Party and the National Party?

Mr Sochacki—Yes.

Senator BRANDIS—Would you say on the basis of your long experience that there would have been a substantial element of electors in Richmond who, knowing that Larry Anthony was the John Howard candidate, would have assumed he was the Liberal candidate?

Mr Sochacki—The less informed voter, yes.

Senator BRANDIS—There would have been a substantial number?

Mr Sochacki—Yes.

Senator BRANDIS—Liberals for forests had not run a candidate in Richmond at the 2001 election, had they?

Mr Sochacki—No.

Senator BRANDIS—To your knowledge had they run a candidate at a previous federal election in Richmond?

Mr Sochacki—No.

Senator BRANDIS—Did liberals for forests run an advertising campaign, whether in the print media, the electronic media or by way of pamphlets, which, during the 2004 campaign communicated to electors of Richmond that they were a distinct and separate political party?

Mr Sochacki—No.

Senator BRANDIS—Did they run an advertising campaign at all other than on election day with these how-to-vote cards?

Mr Sochacki—They may have.

Senator BRANDIS—Do you know?

Mr Sochacki—I am not going to say that I do not think so as I cannot remember.

Senator BRANDIS—To the best of your recollection, they didn't?

Mr Sochacki—I do not think so.

Senator BRANDIS—If that is the case and if there had been no antecedent history of liberals for forests in Richmond, the first that electors of Richmond would have even heard of liberals for forests would have been on polling day when they got this how-to-vote card?

Mr Sochacki—Yes.

Senator BRANDIS—Looking at this how-to-vote card carefully, we do not have a colour—it was in full colour, wasn't it?

Mr Sochacki—It was.

Senator BRANDIS—I am just looking at the story on page 7 of the *Sun Herald* on the day after the election, 10 October 2004, which appears as an annexure to your submission, in which the how-to-vote card is described. It says:

It has similar typefaces and the blue and gold colours used in Liberal campaign material ...

Is that right—that the colours, from your recollection, having seen the original, were blue and gold?

Mr Sochacki—Correct.

Senator BRANDIS—It is commonplace, I think, that blue is the colour most commonly associated with the Liberal Party?

Mr Sochacki—Yes.

Senator BRANDIS—You are aware, aren't you, that advertising for the re-election of the Howard government led by Mr Howard, also the leader of the Liberal Party, in the national media and in the television campaign used the blue and gold livery, and the blue colour is associated with the Liberal Party?

Mr Sochacki—I certainly remember the blue; I cannot remember the gold—

Senator BRANDIS—That will do. What I am getting at is that it seems to me that this is the position: prior to the average elector of Richmond showing up at the polling booth on 9 October last year, they probably would never have heard of liberals for forests because liberals for forests had never run in this electorate before and had not run an election campaign within this electorate for the 2004 election. Is that correct?

Mr Sochacki—That is correct.

Senator BRANDIS—They received this how-to-vote card done up in the Liberal livery with the word 'Liberals' the largest word at the top of the how-to-vote card.

Mr Sochacki—Yes.

Senator BRANDIS—Even if beside it they had seen the words 'for forests', there was no antecedent familiarity among electors in the electorate of Richmond that there was any such political party as liberals for forests.

Mr Sochacki—That is correct.

Senator BRANDIS—Indeed, even the way in which the words 'for forests' is set out is in a somewhat similar way to the stylised block 'L' that you may or may not know that the Liberal Party uses in its election material as a badge.

Mr Sochacki—That is correct.

Senator BRANDIS—You spoke a little to Mr Danby before about the confusion that was reported to you by some who voted for liberals for forests believing that they were voting for the Liberal Party.

Mr Sochacki—Correct.

Senator BRANDIS—I assume you were speaking from conversations you had yourself. Was it reported to you by other Larry Anthony booth workers that they had also seen confusion at their polling places, generated by this how-to-vote card?

Mr Sochacki—Yes. People rang me.

Senator BRANDIS—Was this level of confusion reasonably widespread?

Mr Sochacki—Yes.

Senator BRANDIS—Of course, as we established at the start, there would have been quite a lot of people who thought that Larry Anthony was the Liberal—the people who did not distinguish between Liberal and National.

Mr Sochacki—Unfortunately that is the case, yes.

Senator BRANDIS—Then, among better informed electors, there would have been people who, knowing that Larry Anthony was the National Party candidate, were nevertheless aware that he was a member of and indeed a minister in a Liberal-National Party coalition government and therefore would have assumed that, if they voted Liberal, their second preference would have been directed to Larry Anthony.

Mr Sochacki—Yes.

Senator BRANDIS—So by way of those two streams, anyone misled into thinking that they were voting Liberal by this liberals for forests how-to-vote card would have believed that, ultimately, their vote was going to go to Mr Larry Anthony.

Mr Sochacki—Yes.

Senator BRANDIS—I see that Mr Anthony lost the seat by 301 votes.

Mr Sochacki—Yes.

Senator BRANDIS—If 151 people had voted ultimately the opposite way, he would have won the seat by one vote.

Mr Sochacki—Yes.

Senator BRANDIS—So only 151 minds needed to be confused to make the difference to the ultimate outcome, didn't they?

Mr Sochacki—Correct.

Senator BRANDIS—Ms Tyler, the sandal-wearing North Sydneysider who was the liberals for forests candidate, received 1,417 votes.

Mr Sochacki—Yes.

Senator BRANDIS—So if only about 10 per cent or thereabouts of the people who followed this how-to-vote card believing that they were voting immediately or indirectly for Larry Anthony had been misled, that would have made the difference to the outcome.

Mr Sochacki—Yes.

Senator BRANDIS—Do you think that, on the basis of the anecdotal evidence you received from the National Party and Larry Anthony booth workers, and from your own direct

observation, the level of confusion among those who followed this how-to-vote card would have been in excess of about one in 10 of the people who followed it?

Mr Sochacki—Yes.

Senator BRANDIS—Thank you.

CHAIR—As a procedural issue, following Senator Brandis's references to those two how-to-vote cards, I would like to take those into evidence. Is it the wish of the committee that the documents entitled 'how to vote liberals for forests' and 'how to vote for Larry Anthony' that were presented by Mr Sochacki be accepted as evidence for the committee's inquiry into the conduct of the 2004 election and included in the committee's records as an exhibit? There being no objection, it is so ordered.

Mr CIOBO—Mr Sochacki, I would like to thank you for taking the time to come along today, representing the National Party. I am disappointed that no Labor Party representative is taking the time to bother turning up to the JSC EM hearing today. I hope we hear from them down the track.

Mr DANBY—Chair, I would point out that we have spoken to Justine Elliot. There is no reason why she is not here. The submissions of liberals for forests and the Greens were not matters directly pertaining to the Labor Party, and there is no implication in her not being here. Let us concentrate on the witnesses we have in front of us and not make aspersions about people who are not here for other unrelated reasons.

Senator BRANDIS—Chair, I raise a point of order.

CHAIR—Before I take that I will point out now—given that it has been raised—that, as I pointed out at the start, the local member was invited to appear or to send any representative. That is the custom of this committee. Yesterday we were in the seat of Brisbane, and we heard from the Labor member for Brisbane, Mr Arch Bevis, on matters pertaining to the election. This is an inquiry into the election in the electorate of Richmond. Mrs Elliot is the member for Richmond. She was asked a long time ago—in fact as far back as the beginning of June and again on 17 June—to appear or to send anyone on her behalf. At this stage she is not compelled to, but I point out that her decision not to appear or to send anyone on her behalf is a matter for the people of Richmond to judge.

Mr DANBY—Absolutely.

CHAIR—The fact that she is not here is indeed her choice. But, as a custom, when this committee travels it asks local members to appear—and local members appear at all sorts of things because, as local members of parliament, they are accountable to their electorate—and Mrs Elliot is the first member not to appear. I just make that point. But she has a further opportunity, particularly following today, to appear in Canberra during our next lot of hearings in Parliament House—which will be when we are sitting—and perhaps she will have a little less distance to travel from her office in Parliament House to the hearing room.

Mr DANBY—Chair, can I be very firm on this point: there is no implication in members of parliament not attending individual hearings of this committee. There are 149 members of parliament. We have had a few appear before us who have happened to make specific submissions. Mr Bevis made a very valuable submission about general matters to do with the elections and therefore chose to appear before us yesterday. There is no implication in the fact that Justine Elliot and many other individual Liberal, Labor and National Party members of parliament—both in Victoria, where we come from, and in Queensland—do not appear before this committee. We should concentrate on the issues in front of us without making implications about members of parliament who do not have specific matters to raise following the election.

Senator BRANDIS—Mr Chairman, I take it that it is a point of order. On the point of order: in every electorate in which we have appeared, the federal member has either been present personally, as you say—in Brisbane it was Mr Bevis and in Maranoa it was Mr Scott—or has sent a representative. In Kennedy, Mr Katter sent a representative. Whether or not Mrs Elliot chooses to appear is a matter for her. But let us not talk about implications, Mr Chairman. I am not engaging in any implications; I am making a direct accusation on the basis of Mr Sochacki's very plain evidence that this election was stolen in Richmond. The extent, if any, of Mrs Elliot's involvement in the stealing of that election is a matter of acute concern to this committee, and hopefully she will appear in Canberra.

Mr DANBY—It has never been raised with this committee before. This is, I am sorry, Senator Brandis, a political ambush. It is a very strong and overstated view to say that this election was stolen. We have no evidence and we have reached no conclusions to that effect, and to say that Mrs Elliot was involved in that is beyond the pale.

Senator BRANDIS—I did not say she was involved. In fact, I specifically said that the extent of her involvement, if any, is a matter for us to determine.

CHAIR—Order! We will move on. But, as chair, I will point out for the sake of this committee and for the people of Tweed Heads and the electorate of Richmond, where we are, that I would not want it to be thought that this committee asked The Nationals and every other candidate and not the Labor Party. I would not want it to be thought that the Labor Party were perhaps asked with not a great deal of notice. The Labor Party were asked with a great deal of notice. I simply make the point that everywhere else the Labor, Liberal or National Party member is always keen to appear when the hearing is in their own electorate. As the deputy chair rightly points out, it is true that it is the member's choice, and the member has chosen not to appear.

Mr DANBY—Yesterday 25 members in Brisbane could have appeared before us as well, but only Arch Bevis chose to do so. I do not have any condemnation of the Liberal Party or the National Party. People did not appear because it is not particularly relevant to them.

CHAIR—You may not, but for the sake of this committee and the people of Richmond, who had a close election, we point out that where the local member is invited they customarily appear. That is not the case today, but I say to anyone in the audience who is here on behalf of the Labor Party that we will still hear from Mrs Elliot today, any time, or any member of the Labor Party here in Richmond, should they wish to turn up.

Mr CIOBO—Mr Sochacki, I will go back to my first question. I was stopped at my welcoming remarks. And I remind the deputy chair that I simply expressed disappointment; no implication was drawn by me. Mr Sochacki, when you made the comment much earlier on in your testimony that Richmond was important, that summarised it from my perspective. The reality is that we know that Richmond is a marginal seat. It was the focus of much media attention. It was the focus of much speculation about what the outcome would be. With respect to the provisional votes, I have noticed that 711 provisional votes were cast, and I think your evidence adduced the same figure. Am I correct to understand that, on a two-party preferred basis, provisional votes ran at over 66 per cent for the ALP and 33.5 per cent for the National Party?

Mr Sochacki—That is my understanding, yes.

Mr CIOBO—Do you have any reason as to why there would be on the basis of campaigning such a large disparity between that actual outcome and the outcome more generally across the seat?

Mr Sochacki—Could you repeat that, because I have to be very careful when I answer this question.

Mr CIOBO—I am interested in what possible reasons you may see, in retrospect, as being the rationale for such a large disparity between the extremely high number of votes cast for the ALP through provisional votes and the number of votes cast for the ALP when it came to be actual primary votes at the ballot box.

Mr Sochacki—I am stating the obvious, but I think that, from where I sit and give evidence, I am under privilege and cannot defame or slander any organisation or any person. This is like a court of law.

CHAIR—What you say attracts parliamentary privilege. As I said in the opening remarks you cannot say anything that is misleading or false, but what you say—and I will check this with the secretary here—is covered by parliamentary privilege. Is that right?

Secretary—Yes.

CHAIR—You cannot give any false or misleading evidence, but you can speak on what is honestly in your mind.

Mr Sochacki—May I assume?

CHAIR—You have parliamentary privilege.

Mr Sochacki—May I assume, though? May I make an assumption?

CHAIR—If that is your belief.

Mr Sochacki—Yes. My answer to your question is twofold. Firstly, to reiterate, this was a very important seat for many reasons, including winning the election. It was thought the election

would be very close. The Labor Party has been gunning for Larry Anthony since the year dot for a number of reasons. It has an elitist, misguided attitude to Larry Anthony and what it refers to as the 'Anthony dynasty' and the silver spoon in his mouth, which, once again, is completely misinformed and wrong. Secondly, it is my belief, and I assume, that a large proportion of the provisional votes cast, which, as you said—and I agree—was roughly 60 per cent, was cast with a view of delivering the seat to Labor.

Mr CIOBO—In terms of the actual difference of 301 votes and the outcome of the seat, as Senator Brandis has led with in evidence previously, we saw that approximately 10 per cent of the votes cast for liberals for forests could have delivered the outcome. Likewise, with respect to provisional votes, people simply turned up to vote on polling day, having not being enrolled, somehow walked into the polling booth and said, 'I'm here to vote.' As I said, we have over 66 per cent voting Labor. That of itself could have been the difference between Larry retaining the seat or, in this case, Justine Elliot taking the seat. Is that correct?

Mr Sochacki—Correct.

Mr CIOBO—With respect to visitors handing out how-to-vote cards, you also made the comment that they were dressed in blue and yellow. Is that correct?

Mr Sochacki—It varied: some in blue, some in yellow, yes.

Mr CIOBO—Yellow is the National Party colour. Is that correct?

Mr Sochacki—Yes.

Mr CIOBO—It would appear—and I am just interested in your comments on this—that there was a campaign waged by liberals for forests that basically saw them run dead throughout the entire period of the campaign.

Mr Sochacki—Yes.

Mr CIOBO—And saw them turn up only on polling day, dressed in Liberal blue or in National Party yellow—

Mr Sochacki—It was slightly darker than National Party yellow, but it was so close it—

Mr CIOBO—So really only an experienced hand would be able to determine the difference?

Mr Sochacki—Yes.

Mr CIOBO—They were handing out cards that ultimately were to the benefit of Justine Elliot and the Labor Party. Is that correct?

Mr Sochacki—Yes.

Mr CIOBO—Do you think, and are you aware of any instances in which, the Australian Labor Party or Justine Elliot expressed condemnation or concern over the tactics of the liberals for forests how-to-vote card or any of the campaign tricks that liberals for forests engaged in?

Mr Sochacki—No.

Mr CIOBO—So they were quite happy to stand complicitly by, it would appear?

Mr Sochacki—It so appears, yes.

Mr DANBY—There is a difference between saying nothing and being happy about it, Mr Ciobo.

Mr CIOBO—I am not disputing that. I am simply acknowledging that the Australian Labor Party and Justine Elliot—

Mr DANBY—What a minor group does not necessarily—

Mr CIOBO—I will just finish my point—

Senator BRANDIS—The point is that but for this conduct Justine Elliot would not have won the seat—Larry Anthony would have.

Mr DANBY—That is what you claim.

CHAIR—We have heard some good evidence but I want to put one final proposition to you in summary, based on the answers you have given to all of our questions, and particularly the latter answers you have given to Senator Brandis and Mr Ciobo. Can I summarise that—and please say whether or not you agree—with respect to the how-to-vote card issue, when you consider the margin and the number of people who voted for liberals for forests, it is your contention that the decisive factor at the end of the day in the election result here in Richmond and in Justine Elliot's election was that at least one hundred \$100 notes were paid to foreign tourists to distribute deceptive how-to-vote cards—

Mr DANBY—Allegedly paid to foreign students—we do not know if they were or not—

CHAIR—to deliberately deceive people and, as Senator Brandis has said, to rot this election.

Senator BRANDIS—I think I said 'stole'.

CHAIR—Yes, I think you did say 'stole'. That was what occurred. Would you agree with that contention?

Mr Sochacki—Yes.

CHAIR—And would you agree that all we do not know here today is whether liberals for forests did that of their own volition or whether they did it with the knowledge and possibly the assistance of the Labor Party?

Mr DANBY—That is an outrageous suggestion.

CHAIR—We do not know that.

Mr DANBY—We have no evidence for it. We have no people even producing material to make that point.

Senator BRANDIS—We have inferential evidence that the Labor Party was the beneficiary.

CHAIR—We know the Labor Party was the beneficiary.

Mr DANBY—It is absolutely preposterous on the basis of what we have heard today to draw such outrageous conclusions. The three of you—who are really experienced people and who I can assure the people in the audience are not normally this heated about things—normally would not draw such long inferences from such small amounts of evidence.

CHAIR—We would welcome nothing better at a quarter to eleven than in the next two hours of the hearing—in fact I make the offer to extend the hearing till 1 pm—for any member of the Labor Party to appear and simply answer what are very honest questions. Members of the National Party are here, and I thank them for giving evidence at an official inquiry. We are going to hear from the Greens candidate a bit later, who was not even elected and who has been good enough to agree to appear. We are going to hear from everyone who was not elected; we are not going to hear from the person who was elected. If we did we could clarify some of that.

Mr DANBY—But, Chair, as we did not hear from the 28 other members of federal parliament in Brisbane yesterday—

CHAIR—No—we heard from the local member for the seat of Brisbane.

Mr DANBY—Yes, we spoke about national issues. It was nothing to do with the seat of Brisbane.

Senator BRANDIS—It was a matter for him to say what he wanted.

CHAIR—Mr Sochacki, I thank you very much for your evidence. We will move on to our next—

Mr Sochacki—Do you want me to answer your question?

CHAIR—You did.

Mr Sochacki—With due respect, I did not. I made two notes and there was some discussion.

CHAIR—You are right: I said, ‘Did you agree with the first contention?’

Mr Sohacki—Yes. Bearing in mind the privilege under which I give evidence, circumstantial evidence points to the fact that Labor directly benefited from liberals for forests running in this area. There is absolutely no doubt in my mind whatsoever.

CHAIR—Thank you very much and thank you for appearing.

[10.45 am]

SMITH, Bronwyn Heather, Private capacity

CHAIR—Welcome, Bronwyn. Do you have anything to say about the capacity in which you appear?

Bronwyn Smith—I am here just as a voter—a local constituent.

CHAIR—As an elector for the seat of Richmond. Welcome. The committee has received your submission, which is numbered 38. It has been authorised for publication and made public already. Is there anything about the submission you would like to correct or amend in any way?

Bronwyn Smith—No.

CHAIR—Please make a brief opening statement about the substance of your submission and then we will take some questions.

Bronwyn Smith—I have taken notes, and I would like to read them out so that I am not adlibbing. It is only a couple of pages. I am probably out of my league here. I live at Pottsville in the Richmond electorate. I am here as a local constituent. Firstly, I would like to thank the Joint Standing Committee on Electoral Matters for taking the election issue seriously and having these hearings to hopefully improve the process in years to come. I am an honest person and a very average Australian with a very average HSC level of education. I have a basic and simple approach to life: do unto others as you would have them do unto you. I only have locks on my doors to satisfy the insurance company and they only keep honest people out anyway.

My letter and complaint were totally off my own bat, and I did not discuss it with anyone else. Currently, I receive Centrelink assistance, having been forced to close my business some years ago due to health problems and GST pressures. I am genuinely concerned for the future of Australia and the future of my children. I do not belong to any groups or associations or subscribe to any magazines. I have always understood Australia to be a democracy, which means government by the people directly or through elected representatives.

In relation to the 2004 federal election, I would never knowingly vote for a Green party as I feel they tend to make trouble. Also, many of them live in timber houses and their policies seem to be too one-sided. I believe most Australians are basically environmentally conscious in accordance with their environmental education. I feel a Green government would still allow big corporations to cause environmental problems. I feel very strongly that I was deceived, misled and let down by the process because I am an average individual, not an academic capable of substantial research. On polling day, liberals for forests clearly looked like a group affiliated with the standing member.

I always vote for a party that I feel can improve the nation and keep its promises. I feel as though I have been penalised for my lack of education and I am hurt that I was deceived. My understanding of deception is that it is dishonest and you can never stop at one lie. So I wonder

what else I have been deceived about. I am not interested in the acts and regulations, because I am an honest citizen and these days it is impossible to know all the laws and regulations, let alone abide by them.

I would like to know how I get it right with my voting paper next time—if I am not going to be taken off the roll, which I have asked to be. How do I get it right next time so that my vote goes where I want it to go? My understanding is that laws and regulations are written with academic jargon to fool the average, common person who only possesses commonsense. They allow a margin for interpretation so that any law can be tested. In the 2000 election I would never have voted Liberal if I had been aware that a Liberal vote meant a sale of Telstra, as it is our most lucrative source of income after natural resources, which we practically give away anyway.

In the 2004 election I looked closely at the Labor Party and their policies. But the Richmond representative was experienced and approachable and had a ministry which was very important to the area on a community level. You could write to Mr Anthony's office on any issue and, if they could not help you, they would head you in the right direction. I believe that Justine Elliot will do the best she can for the region. When I place a vote at an election I should have the sole right to where that vote is to go. However, once it leaves my hand, it can go to any number of parties. I feel one vote, one value should be the case. Many people probably have no idea where their vote goes. At the polling booth at Pottsville it was like running the gauntlet. Liberals for forests were there in force. I apologise for this being all over the place but I am ordinary.

CHAIR—You are very coherent, Bronwyn.

Bronwyn Smith—Prior to the election I asked Larry and Justine's offices about their positions regarding the sale of Telstra. I could not get a straight answer so I chose Larry, because of the ministry, and took the chance with Telstra as we had already lost half of it anyway. I was confused at that point—that is, at the polling booth—about liberals for forests because I had never heard of them. They were dressed similarly to the Liberal-Nationals. They wore yellow. I thought the writing on the Libs for Forests' shirts was green. I thought it was a Liberal vote with an environmental base. The vote cards were similar to Larry's Nationals cards. They got my second vote because the ministry was extremely important to the area, as there were rumours that the Australian Centrelink call centre was planned for the area, which would mean many more jobs.

According to a phone conversation with Sarah Miskin, from the joint standing committee, Larry had 46 per cent of the primary vote. According to Sarah, there were around 1,700-plus primary votes for liberals for forests. I am not sure whether these were because people were as confused as I was. According to the local media, over 3,500 people have made some presentation to the media to say that they were confused and that they also thought they were casting a Liberal vote. There are a few basic political matters I do not understand. Firstly, why was this inquiry not done before the Liberals took over the Senate, as there could be a biased decision about it? If every state in Australia is Labor controlled, how can we have a Liberal federal government and Senate? That does not make sense to me. What does 'marginal seat' mean?

I also want to know why I received a fax as late as Tuesday night from the AEC regarding the issue of liberals for forests. It was so close to the hearing that it led me to believe that the AEC

did not accept the party registration for liberals for forests because of possible confusion. The Liberals in WA were involved in setting aside the AEC refusal for that registration. However, this letter did not state when that party, liberals for forests, were actually registered, only that they applied in July 1999. I have that letter here.

The bottom line is that I should either have a choice about where my vote goes or know where it possibly could go so that I can make a democratic and informed decision before placing my vote. Preferential voting creates a lot of confusion, and I do not want another party or group deciding at the end of the day where my vote goes. I have kept all the fliers that arrived in my letterbox from the last two federal elections and I cannot see any fliers from liberals for forests. I am a classic hoarder. When I arrived at the polling booth I panicked, as I had not heard of them before and they looked so much like the Anthony team that I made the error due to confusion.

I trust the AEC and the standing committee will make the improvements that people want to the election process. It seems very clear that generally Australians do not like or understand the preferential voting system, and I feel that the process is deceptive in its very nature. 'Do I have a right to vote' or 'do I have an obligation to vote' are, as I understand it, two different things. Once again, thank you for taking the time to listen to people and for inviting me to have this opportunity today. How can I vote in a way that my vote gets counted and only goes where I want it to go?

CHAIR—Thank you very much for that opening statement. You had a number of questions there; I cannot answer all of them in the time available. With respect to the question regarding the Electoral Commission fax you received on Tuesday night, we are hearing from the returning officer for Richmond a bit later and I notice he is going to make a phone call and find out about that. That is something separate to us.

With respect to your specific question about the timing of this inquiry, we began the inquiry straight after the federal election and we will go through for the next few months with an aim of reporting by about October. This inquiry occurs automatically by this committee straight after every election, so we began at the end of last year. We had our first hearings earlier this year in regional Queensland, where there were some problems with postal votes, and then yesterday in Brisbane and today in Tweed Heads. We will go round to each of the major areas—regional and capital cities—where we have had submissions. That is the answer to that.

I just have one question, because I know others have got a few. What you are saying goes back to Senator Brandis's point with the previous witness. I think Senator Brandis said, if just 151 of the people who voted for liberals for forests did so with confusion, not knowing their vote went to Labor, that would have actually seen the election of Larry Anthony rather than Justine Elliott. What you are really saying to us in simple terms is that you are one of those 151.

Bronwyn Smith—Yes. Can I add that I do not believe Justine was knowingly involved in it. I do not think she really expected to win.

Mr CIOBO—Thank you for appearing before the committee. I have a couple of questions. I notice you have asked to be taken off the electoral roll. Why is that?

Bronwyn Smith—Because I felt deceived and hurt. My vote does not get handled correctly, so I do not think I want to be involved in it anymore. I mean, I vote all the time and I take it very seriously. In this instance, my vote meant absolutely nothing.

Mr CIOBO—So, as a direct consequence of you being misled by liberals for forests, you have asked to be taken off the electoral roll?

Bronwyn Smith—The AEC supposedly oversees all these parties. I made my complaint. My first letter was in February and I got a fax regarding that party and their registration et cetera on Tuesday night to say that the AEC got the application for registration in July 1999. The AEC is claiming that it knocked back that registration, but in WA the case Woollard and Australian Electoral Commission and Liberal Party of Australia had that decision set aside. So the AEC is claiming in this letter, as I read it, that it was the Liberal Party itself that wanted liberals for forests as a party.

Mr CIOBO—No, that is not right. We had better get that letter tabled.

CHAIR—No, you have got that confused. We have had some other evidence, in the form of a submission, which is that, because the name was likely to confuse, the Liberal Party sought jointly with the AEC to have that name denied, and that was the initial outcome. But that decision was set aside—appealed, if you will—by the Administrative Appeals Tribunal. That is my understanding of that. If you have got that letter there, it might be good to get it tabled.

Bronwyn Smith—Obviously I have read it wrongly, if that is what you are saying.

CHAIR—If you could hand it up, it would be of assistance, and we will keep on with questions.

Bronwyn Smith—Will I get it back?

CHAIR—Yes.

Mr CIOBO—Can I ask you to talk us through when you went to vote. Think of liberals for forests—and you said you took their paraphernalia from them—and tell me what they were dressed like when you approached the polling booth.

Bronwyn Smith—I did not realise I had made this mistake until some months later. I read some stuff in the paper and thought, ‘I have been one of those people,’ and I was angry because we lost the ministry. From memory, I thought they had yellow shirts with greeny-blue writing, a similar colour to one of these colours of Larry’s. This was what came in the letterbox, or the free paper that was about the election. There is nothing in there from liberals for forests—and I keep everything. I am a hoarder; I even have the 2000 one here.

Mr CIOBO—As they handed you the how-to-vote card, do you recall, by any chance, what they said to you? Did they say, ‘liberals for forests,’ or, ‘How to vote liberal’?

Bronwyn Smith—It is like running the gauntlet. I do not really recall. I took everybody’s papers and, when I came back, I handed them all back, because I am environmentally conscious.

CHAIR—Obviously your evidence is that whatever it was that they said to you confused you into thinking that they were in fact Liberals.

Bronwyn Smith—No, it was the paper. They were dressed in a very similar way and the paper was very similar. I thought, ‘I do not know where this has come from,’ but, because I had not seen anything unusual—and I had been watching the TV and reading all this stuff—I thought that they were an environmentally based Liberal group that were going to suddenly start protecting the environment. I thought, ‘That’s good,’ and that naturally it would go to Larry.

CHAIR—So, by doing the right thing and following their ticket, you thought Larry would ultimately be the beneficiary of your vote?

Bronwyn Smith—I certainly did not expect it to go anywhere else.

Mr DANBY—I thought your evidence was very coherent. When did you make your first complaint about liberals for forests? Just remind me, please.

Bronwyn Smith—My first letter was sent on 1 February. Basically it was to take my name off the electoral roll because I do not trust it.

Senator BRANDIS—Is this the letter that is an annexure to your submission to this committee? I think we have that letter.

Bronwyn Smith—My first letter was to the Electoral Commission at Tweed Heads.

Mr DANBY—I would have thought you would have been most angry about being misled immediately after the election. Why did you wait until February?

Bronwyn Smith—I did not know; I did not realise. I do not read a lot of newspapers and I do not get involved in that stuff, but I certainly write to politicians and whinge and complain if I am not happy about things. The first time I realised was when I was reading a paper and it said that other people were confused too, that the liberals for forests vote was a green vote going to Labor; and that was when I got angry.

Mr DANBY—But after the elections, when Larry Anthony lost, there would have been a lot of publicity. Didn’t it make you angry at the time?

Bronwyn Smith—I did not read it all.

Mr DANBY—So you were not aware that Larry—

Bronwyn Smith—I knew Larry had gone and we had lost the ministry, and I was upset and angry about that.

Mr DANBY—What do you mean by ‘we lost the ministry’?

Bronwyn Smith—Having a ministry in your backyard is an important issue to me, and it should be to a lot of other Australians, especially a community type ministry. He was the

minister for youth and community affairs. It is a bit hard to know what the terminology of a ministry actually means these days.

Mr DANBY—You knew very clearly that Larry Anthony was the sitting member and that Justine Elliot was the Labor Party candidate.

Bronwyn Smith—Yes.

Mr DANBY—You said you were misled into voting for liberals for forests. You got a how-to-vote card which said: (1) Fiona Tyler; (2) Flower, S; (3) Winton-Brown. Then it said: Justine Elliot (4), and Larry Anthony (5). So you followed that without thinking?

Bronwyn Smith—I do not understand how all that works, because it is preferential stuff.

Mr DANBY—So you do not think putting Justine Elliot ahead of Larry Anthony means you are giving your preferences to Justine Elliot first?

Bronwyn Smith—No, I just looked at the No. 1.

Mr DANBY—Okay.

Bronwyn Smith—I am a very ordinary person, and most of us out here are—

Mr DANBY—I am not criticising you for whatever—

Bronwyn Smith—No, that is okay.

Mr DANBY—I was just asking how you came to the conclusion that you voted for Larry Anthony.

Senator BRANDIS—You might not be able to answer this, but when you came to vote and saw the name ‘Elliot, J’ on the ballot paper, did you recognise that to be the name of the Labor Party candidate?

Bronwyn Smith—Well, I guess I would have.

Senator BRANDIS—In your letter to the AEC on 21 February 2005 you say this, referring to liberals for forests:

There were thousands of local people deliberately and fraudulently misled by this party and voted for them understanding they were casting a Liberal vote.

And you said much the same in your evidence to us this morning, though I do not think you quoted the figure of thousands. You are aware, are you, from your own knowledge and from conversations you have had with local people that there are a substantial number of people who followed the liberals for forests how-to-vote card thinking that ultimately they were going to be voting for Larry Anthony?

Bronwyn Smith—That is what was in the free paper. There was an article in the free paper about it. Most people do not talk about who they vote for.

Senator BRANDIS—Do you have that paper here, by the way?

Bronwyn Smith—No.

Senator BRANDIS—What is the name of the free paper, and about when did the article you are referring to appear?

Bronwyn Smith—I do not remember. I do not always write my letters straight away. When I decide to write a letter, I just put a note to write a letter to so-and-so about—

Senator BRANDIS—But it was obviously before 21 February?

Bronwyn Smith—Absolutely. It would have been well before that.

Senator BRANDIS—What is the name of the paper?

Bronwyn Smith—I think it is called the ‘Weekly’ or something.

Senator BRANDIS—Okay. We will look at that.

Bronwyn Smith—We have four free papers that come, and I only read whichever one. I am not big on that sort of stuff and the media because we are not always told the truth. So I rarely read them.

Senator BRANDIS—In any event, there is no doubt in your mind that you are not alone in being misled—that there were a substantial number of other people misled in the same way as well.

Bronwyn Smith—That is right. You have only got two of the how-to-vote cards there. On the day, we are handed a great swag of them. You have this tiny little area to look at them in. You cannot stand out in public. You have this little box thing. If you lay them out on the table and compare them, it takes a fairly good mind to have a look at the whole lot and see how they compare—it is a puzzle.

Senator BRANDIS—Your point being, I suppose, that like everyone else in the country when you vote you look at the headline, as it were, on the how-to-vote card and say, ‘Yep; that’s the one for me,’ and then you just follow it without thinking too much more?

Bronwyn Smith—Yes.

CHAIR—I thank you very much for appearing before us today—for putting in your submission and for coming along this morning. That is important evidence and it was good to hear first-hand from a member of the public, as well as from the political parties. Thank you very much. It has been most valuable.

Bronwyn Smith—Thank you.

[11.09 am]

FLOWER, Mrs Susanna Margaret, Federal Candidate 2004, the Greens

TABART, Mr Thomas Alfred, Secretary, Tweed Greens, the Greens

CHAIR—I would like to welcome Mrs Susanna Flower and Mr Thomas Tabart to today's hearing. Please state the capacity in which you appear before us today.

Mrs Flower—I was the candidate for the Greens in the federal election in the seat of Richmond in 2004.

CHAIR—We have received a submission from the Australian Greens at a national level. It does not mention the Richmond campaign specifically, but I understand that you will direct your comments to your personal experiences with the campaign here in the Richmond electorate.

Mrs Flower—Yes.

CHAIR—Would you like to make a brief opening statement, as the other witnesses have done, then we will have some questions.

Mrs Flower—As you said, I am here mainly to answer questions. We do not have a submission ourselves. Having said that, I would like to make a couple of points. I do believe that liberals for forests misled voters. They were dressed in the manner of The Nationals; they had The Nationals' colours. A lot of people were confused. The people handing out the how-to-vote cards were actually paid by somebody. I agree that people were misled. I think that it was an attempt to get the people who feel strongly about the environment but who cannot quite bring themselves to vote for the Greens—being too radical, which of course we are not—to vote for a party that appeared to have an environmental concern but which was a liberal party. It may seem amazing that people did not look down and see that Justine was ahead of Larry, but people take that how-to-vote card as gospel when they go in to vote. So I agree with the Nats.

Having said that, I would also like to point out that The Nationals indulged in some fairly nasty advertising tactics themselves by using my photo—not a very good one—and a photo of Jan and taking the fact that we—

CHAIR—Who is Jan?

Mrs Flower—Jan Barham, who is the Green Mayor of Byron Shire. They also used statements that we had made. We did not run a nasty campaign. In the course of interviews I had said something favourable about Larry, because I did not want to denigrate the man even though I abhor his party's policies. So they are not averse to using those tactics themselves. They also used the Greens logo, which we did complain about. They are the two points I wanted to make. I could go on. I have a copy of an ad in our local *Echo* that also used the Greens logo in relation to the train debate that is currently going on in our shire. That is mainly what I would like to say.

CHAIR—First of all, thank you for coming. It is good of you to come. It is good that, as a candidate who ran but was unsuccessful, you still wanted to come along and put forward your views. That is very much welcome and helps us in our work. I have a couple of opening remarks to make. If I could summarise your point, you said that you did not agree with The Nationals' policies, and I accept that. People might criticise the Australian Greens—I would be critical of them; I am a member of the Liberal Party—but you do say what you believe in. Your contention would be that people should say what they believe in, that voters should have a clear choice and that voting should be determined on the voters' views of the issues.

Mrs Flower—Yes.

CHAIR—To you, a misleading and deceptive how-to-vote card like that would be the equivalent of, say, someone having a how-to-vote card that listed a party called 'Labor Against Woodchips' when in fact it was the timber industry. That would be an equally deceptive sort of thing.

Mrs Flower—Yes.

CHAIR—You Greens do not in any way try to hide your policies; you have them out there. Some people like them and some people hate them, but no-one can say that they do not know where you stand on certain issues. Is that your view?

Mrs Flower—Yes, I would agree with that. That was how we tried to run our campaign.

CHAIR—Here in Richmond?

Mrs Flower—In Richmond we got our policies out to the people and we did not try to denigrate the other candidates. If we denigrated anything it was their policies that we did not agree with.

CHAIR—As a candidate on election day, you would have travelled around to a number of polling booths and been through the normal sort of thing.

Mrs Flower—Yes. I went to as many booths as I could in the day.

CHAIR—How did you feel when you saw liberals for forests doing that, in terms of the fabric of democracy? You saw people that obviously were not locals, obviously not from Richmond. Unlike the other 85,000 to 90,000 people voting—

Mrs Flower—It was disturbing.

CHAIR—they were not voters.

Mrs Flower—That is right. Having been politically active in the Greens for a long time and handing out how-to-vote cards at every election, you generally get the same people handing out cards. Even though with some people you end up having a good little debate, you all know why you are there. Sometimes there is a bit of jostling, but these people had obviously never handed

out cards before. It is not their fault. They were offered a job while they were on holiday or whatever, so this was just a job to them. But they did cop a bit of flak at various booths.

CHAIR—Did you ever meet the candidate for liberals for forests?

Mrs Flower—No.

CHAIR—We have looked at the material you have referred to and I have looked at the local papers. There was that situation in the local papers which is typical in all electorates where candidates are rightly asked by the local paper to submit a statement and they each get an equal number of words. The liberals for forests candidate did not even submit a statement or a photo that we saw in one of the papers.

Mrs Flower—Yes. They certainly were not at the ‘meet the candidates’ evening.

CHAIR—As well? So you never met the candidate for liberals for forests?

Mrs Flower—No.

CHAIR—I have a copy of the edition of the *Byron Shire Echo* which contains your profile. It has all the others there. It has Justine Elliot’s profile. It states that you have lived here for 22 years, it gives your background, what you do and your view for the area, which is giving people a choice. It has the Democrat candidate’s profile and it even has the profile of the Defence and Ex-Services Party candidate. But at the very bottom, in an editor’s note, it says—

Mrs Flower—Yes, that is right.

CHAIR—that all candidates were invited to submit profiles et cetera, and that Fiona Tyler of Neutral Bay represents liberals for forests, and that was it. She decided not to put anything in. Do you think it is entirely possible, or indeed probable, that she has never been to Richmond?

Mrs Flower—It is possible. I do not know. I have never met her and I do not know who she is. The voting system allows that to happen.

CHAIR—Yes, that is right. But the point I am drawing out is the point that you rightly made: as an Australian—leaving aside the Greens—you were disturbed by the fact that on polling day there were people being paid to hand out how-to-vote cards, the large majority of whom, for all intents and purposes, seemed to be foreign tourists who were just trying to earn some money.

Mrs Flower—Another way of getting around that and ending the whole ‘running the gauntlet’ issue would be to not have any handing out of material at the booths, and just have each party with their campaign. Prior to the election is when you have all the information coming in, you have it in the papers, and that is the time for people to make their decision. Then on election day it makes it much calmer to go into the booths and vote.

CHAIR—Going back to my original question, you never met Fiona Tyler?

Mrs Flower—No. I did not meet her.

Mr DANBY—Thank you, Mrs Flower, for coming here today. I just have a couple of things to ask you. In our notes for Richmond it says that your electorate is very much like the electorate of Corangamite—there has been a bit of a sea change here. There are people moving up from Sydney, which has caused a bit of a social change in the composition of the population. From my experience of being here, I think this is a seat where people are very conscious of and interested in the environment. Would you say that that is true?

Mrs Flower—Yes, that is true for a large part of the seat.

Mr DANBY—There might be a group of people who, as you said before, find the Greens too radical but who are interested in the environment.

Mrs Flower—Yes.

Mr DANBY—So some of those people might think that a better party to vote for would be liberals for forests on the particular occasion of the last election. There is the fact that the liberals for forests ticket was this big when people got it. I have here a photocopy of it. It has got in fairly big letters ‘Fiona Tyler’—their candidate—and then you as No. 2. I presume you knew that you were getting their preferences.

Mrs Flower—No, there was never any dealing done with the party at all.

CHAIR—So it just happened?

Mrs Flower—Yes.

Mr DANBY—So you think that a lot of voters would have been fooled by the fact that Justine Elliot was put ahead of Larry Anthony and you think they would not have otherwise changed those votes themselves or they would have done this in an unconscious way without knowing why they were doing this.

Mrs Flower—Yes. I know it sounds unbelievable but I am still amazed, when people come to vote, by their ignorance—I do not mean that in a nasty way—and by the fact that they still do not really understand. The system we have at the moment forces people to vote for a major party because we do not have optional preferential voting. They have to number all the squares and so they are forced to vote for one or the other—that is another issue. A lot of people will just follow the card: they think, ‘Okay, that sounds good to me.’ A lot of people follow that without realising.

Mr DANBY—So a lot of people who are Liberals or liberals for forests would have voted for Justine Elliot ahead of Larry Anthony without understanding why they were doing it?

Mrs Flower—I think there would have been a number of people who would have.

Mr DANBY—Are there other people who, although they would regard the Greens’ policies as too extreme, are Liberal environmentalists who would have made the decision to prefer Justine Elliot ahead of Larry Anthony?

Mrs Flower—Possibly.

Mr DANBY—Can you see that as a decision that liberals for forests voters might make, in that they might prefer Justine Elliot ahead of Larry Anthony?

Mrs Flower—I think if people wanted to vote Green and Labor they would probably vote Green and Labor. I think it was the combining of ‘liberals’ with ‘forests’. Yes, it is possible but I think it was definitely aimed at Liberal voters with a green conscience.

Mr DANBY—Say you are one of those sea changers who have moved up here. You are concerned about the environment, you are a small ‘l’ liberal and you cannot quite bring yourself to vote Green so you make a decision at election time that at the end of the day, if you have to choose between the two major political parties, the Labor Party’s policy on the environment is slightly better so you will support them rather than the National Party, which is more pro development. Wouldn’t you think that is a choice that middle-of-the-road liberals for forests sea changers who have come up to this electorate might make?

Mrs Flower—That is a very complicated question. I see what you are getting at and I guess it is possible.

Mr DANBY—My last question is about the acrimony you described at the polling booths. The gentleman from the National Party said that all National Party booth workers were too polite to raise these issues with liberals for forests. Did the Greens do so? Did you observe people getting stuck into liberals for forests and arguing with them? What was the nature of these arguments?

Mrs Flower—I think that did happen at a number of booths. I think Tom actually witnessed that.

Mr DANBY—Do you know the nature of these arguments with people at polling booths? What were they saying to liberals for forests?

Mrs Flower—I did not actually witness it myself because I was not at booths for long enough. I only know that a couple of people had mentioned it to me. Tom Tabart, who is part of my campaign committee, could tell you what he witnessed, if that is possible.

CHAIR—It is possible. We will continue asking you questions and then we will talk to Tom.

Senator BRANDIS—Mrs Flower, I see in your profile in the *Byron Shire Echo* that you have been the local treasurer of the Greens for about 10 years.

Mrs Flower—I am no longer the treasurer.

Senator BRANDIS—But in June of last year you had been treasurer for about 10 years?

Mrs Flower—Yes.

Senator BRANDIS—Had you been involved with the Greens in this district even before that?

Mrs Flower—No. When I came on board I pretty well became the treasurer straightaway. We were a very young group then.

Senator BRANDIS—So you have been active in politics in this area since about 1994?

Mrs Flower—Yes.

Senator BRANDIS—That means, on my calculations, you would have gone through four federal elections.

Mrs Flower—Yes, I would have.

Senator BRANDIS—And a few state elections too.

Mrs Flower—Yes, but not as a candidate.

Senator BRANDIS—That was my next question. Was last year's federal election the first time you had stood as a candidate?

Mrs Flower—Yes.

Senator BRANDIS—But you had worked as a Greens activist in the previous three federal elections and a few state elections as well?

Mrs Flower—Yes.

Senator BRANDIS—And some municipal elections as well?

Mrs Flower—Yes.

Senator BRANDIS—Had there ever been a liberals for forests candidate at any previous election in this district, as far as you can recall?

Mrs Flower—Not that I can recall.

Senator BRANDIS—From your answers to some questions from the chair, I got the impression that, during the 2004 federal election campaign, the liberals for forests candidate, Fiona Tyler, was basically nowhere to be seen—is that right?

Mrs Flower—That seemed to be the case. As Bronwyn Smith has pointed out—and I do recall that now—she did not submit a profile in the *Echo* and she did not come to any of the meet-the-candidate nights and I did not meet her.

Senator BRANDIS—How many of those were there?

Mrs Flower—There were quite a few.

Senator BRANDIS—Were there really?

CHAIR—It is a big electorate.

Mrs Flower—I think there might have been five or six. There were at least four.

Senator BRANDIS—So there were five or six meet-the-candidate nights. Then there was the free advertising, as it were, in the local newspapers, of which we have been supplied copies, in which Ms Tyler was the only candidate who did not supply any party platform, as it were?

Mr DANBY—There was another one.

Senator BRANDIS—The other reference is to a Mr Craig Lees, but he was not, I think, a party candidate. Was there any advertising in the newspapers or in the local electronic media by liberals for forests that you saw?

Mrs Flower—I cannot remember seeing any.

Senator BRANDIS—You were a reasonably active candidate, presumably. You got around the traps in Richmond. You knew what was going on.

Mrs Flower—I got out there as much as I could.

Senator BRANDIS—So if there had been advertising by liberals for forests, do you think it probably would have come to your attention?

Mrs Flower—Yes.

Senator BRANDIS—So we have this bizarre situation: the candidate is nowhere to be seen, does not go to any of the five or six meet-the-candidates evenings, does not run a campaign at all and yet, lo and behold, on election day all of these people in snappy new blue or yellow T-shirts show up out of the blue at polling places, distributing liberals for forests how-to-vote cards. Is that the picture?

Mrs Flower—Yes.

Senator BRANDIS—We have heard earlier evidence that there would have been maybe 100, 150 or even 200 such people handing out the liberals for forests how-to-vote cards at polling booths—does that sit with your recollection?

Mrs Flower—They were at most of the booths, and there are a lot of booths.

Senator BRANDIS—Did their booth workers outnumber the Greens booth workers?

Mrs Flower—No.

Senator BRANDIS—Would it have been roughly about the same?

Mrs Flower—No. They did not have as many as the Greens.

Senator BRANDIS—So there was no election campaign, this party had never run here before and the candidate did not show up. All of a sudden, lo and behold, on election day they had all the booths covered with an army of booth workers. Did that strike you as remarkable?

Mrs Flower—Yes; very odd.

Senator BRANDIS—What did you think about it?

Mrs Flower—We knew what it was; it was obvious.

Senator BRANDIS—What was it? Tell us.

Mrs Flower—It was a bogus party, set up to steer votes away from the National Party.

CHAIR—To deceive people.

Mrs Flower—To deceive them. Although someone in the room has another theory.

Senator BRANDIS—To a certain extent, this relies on anecdotal evidence. I understand that. But we know that the difference, the magic number, was 151. Mr Anthony lost by 301 votes. So, if 151 people who had meant to vote for him, either as a first preference or as an ultimate preference on the final distribution of preferences, in fact were deceived into voting for his opponent, then that would have made the difference in the seat. We also know that 1,417 people voted for liberals for forests and presumably followed the liberals for forests how-to-vote card. Just on the basis of the anecdotal evidence and your experience as a candidate going around the booths and talking to the electors, do you think it would be fair to say that 10 per cent or more of the people who ended up voting according to the liberals for forests how-to-vote card were tricked into doing it?

Mrs Flower—It is possible.

Senator BRANDIS—It was a substantial number, wasn't it?

Mrs Flower—Yes, but—I guess it is also that the people who voted obviously had not made up their minds who they were going to vote for before they got there. So we will never know, really, whether the ploy worked in taking fair dinkum Nationals voters.

Senator BRANDIS—Well, you have identified the ploy.

Mrs Flower—I think the ploy was there, but whether it worked—

Senator BRANDIS—The only question is: how many of those 1,417 people who followed the liberals for forests how-to-vote card did it wanting to vote for the liberals for forests party, and how many of them thought that they were, directly or indirectly, voting for Mr Anthony? Is that a fair summary of the situation?

Mrs Flower—It is. We will never know.

Senator BRANDIS—We will never know. But that is the issue, isn't it?

Mrs Flower—Yes.

CHAIR—We have heard evidence, of course, of what happened in Richmond. We also know that the same thing, to a certain extent, happened in Page, the neighbouring seat with the National Party. You would accept, wouldn't you, that this sort of ploy or deceit with liberals for forests can really only work successfully in a major way where the National Party is running and the Liberal Party is not. Would you accept that, on election day, had it been a three-cornered contest it would have been a diluted thing, to the extent that there would have been Liberal how-to-vote cards and Nationals how-to-vote cards and that confusion would have been more apparent.

Mrs Flower—You are saying—

CHAIR—They were the only how-to-vote cards with 'Liberal' on them; that is my point.

Mrs Flower—I understand what you are saying.

CHAIR—So therefore—

Mrs Flower—It is possible that—

CHAIR—that maximised it. Whereas if there had been—

Mrs Flower—A Liberal candidate—

CHAIR—For that reason it did not occur very much elsewhere around the country. People would—

Mrs Flower—There could be people—

CHAIR—There still would have been confusion, but a larger number of people would have said 'Well, hang on.' They would have got two how-to-vote cards: an official Liberal one and a liberals for forests one, and they would have said, 'Hang on; which one is what?' and they would have twigged. Would you accept that?

Mrs Flower—I guess so. So people who align themselves with Liberal—

CHAIR—My point is: because Larry Anthony was a National and because there was the knowledge that the Liberal Party would not be running here because he was a sitting National Party member, that—

Mrs Flower—It is possible that the ploy could work better.

CHAIR—made it all the more attractive. I now call Mr Ciobo, who is the member for Moncrieff, just up the road.

Mr CIOBO—Mrs Flower, I have got to say that I would certainly be pleased to have your surname if I were a Greens candidate.

Mrs Flower—Perfect, isn't it!

CHAIR—You did not change it by deed poll, did you?

Mrs Flower—No. I married it.

Mr CIOBO—I have a number of questions. I have looked over your results and I see you achieved a 2.3 per cent swing towards the Greens. Whilst as a Liberal I am obviously not happy about that, I acknowledge that it was a good result for the Greens. Do you think that in large part the fact that you have such an iconic brand as the Greens—you talk about the Greens logo and positioning yourself in the cluttered marketplace—is an advantage? Do you think that having an identifiable brand, the Greens, helped in securing votes?

Mrs Flower—Do you mean being able to use the actual logo?

Mr CIOBO—Yes, and having people decked out on the polling day.

Mrs Flower—Yes, of course. I understand what you are saying. We do have a very pronounced logo that people see, and that strong logo is an important part of our party. But I think that people voted for us because they like our policies and what we stand for.

Mr CIOBO—So they know you are Greens and they like what you stand for and they vote for you.

Mrs Flower—Yes.

Mr CIOBO—Obviously the Greens have a strong platform of being pro environment, and, as I said, you secured a 2.3 per cent swing towards you. As someone who is obviously involved in the political process, I think it would be fair to say that most, if not all, successful major parties have very identifiable brands.

Mrs Flower—Yes.

Mr CIOBO—Based on that, when we have liberals for forests not distributing any paraphernalia, not doing any advertising, not turning up as candidates and yet still securing close to 1,500 votes, does it raise question marks in your mind about what their purpose is?

Mrs Flower—It raises question marks about how they managed that and who the people are who vote for a party that does not have any profile at all or even a candidate. Those are the questions it raises for me.

Mr CIOBO—I think you said that on circumstantial evidence it appears to you that it was a bogus party set up to do one thing, and that was to try to draw votes off Larry Anthony.

Mrs Flower—Yes, I do believe that. In reference to our iconic logo, that is also why the National Party wanted to use our logo in advertising—to try to steer green votes to them.

Mr CIOBO—In respect of organisational affairs, were the Greens approached by the Australian Labor Party in Richmond for preferences?

Mrs Flower—Yes. We did have discussions on how preferences would flow.

Mr CIOBO—So you are aware that the Australian Labor Party would have approached the Greens, knowing that you would achieve a significant number of primary votes and trying to solicit your preferences?

Mrs Flower—Yes.

Mr CIOBO—Do you by any chance know whether or not the Labor Party approached liberals for forests?

Mrs Flower—I do not know.

CHAIR—Mrs Flower, thank you very much for your evidence. I thank you sincerely for coming along again today. It is something we asked of all the major candidates in Richmond, and it is good that you made the time some eight or nine months after the election to give your perspective. It is very valuable to us. We will now briefly question your colleague Mr Tabart. We have a couple of questions specifically on the polling booth activities. Mr Tabart, do you have any comments to make on the capacity in which you appear?

Mr Tabart—I was one of the campaign coordinators for the 2004 election.

CHAIR—On behalf of the committee, I will ask a question that Susanna was not able to answer directly. Did you witness any disagreements, discussions or stoushes on election day about the how-to-vote card issue?

Mr Tabart—I was at the Banora Point West booth, I think, at the St Joseph's school, a fairly big—

Mr DANBY—What suburb is that in?

Mr Tabart—Banora Point, in Tweed, close by here. It is a fairly big booth. There was a large National Party contingent there, a fairly large Greens contingent and others. The liberals for forests hander-outer was from Norway. She knew she was in Australia and that is about all she knew. I asked her whether she was getting any money for this, and she said she was getting dinner. She handed out without comment to people. She was wearing a yellow jersey or T-shirt.

CHAIR—Which had been given to her?

Mr Tabart—I assume it had been given to her. I did not ask.

Mr DANBY—Did it have anything on it or was it just a yellow T-shirt?

Mr Tabart—I think it had ‘Libs for Forests’, but that is just from memory. During the morning the National Party booth workers became very agitated when they realised the impact of the how-to-vote. In fact, it was almost akin to pouring hot water down an ants’ nest. They started swarming all around her and asking her questions. If anybody took a Libs for Forests how-to-vote, they followed them down the causeway trying to explain to them what they had.

Mr DANBY—Would *Hansard* record me saying ‘aha’.

Mr Tabart—About midmorning Mr John Murray, a former councillor on the Tweed council and, I believe, a member of the National Party, arrived. I did not see him actually talk to the woman; I was otherwise engaged. But I did see her in tears shortly afterwards. She remained handing out for a short time when the police arrived. I believe Mr Murray had called them. She departed shortly after that.

CHAIR—Any other questions?

Mr DANBY—I will say more about Liberals doing the same as Greens in my electorate at a further occasion of this committee, but I will not bore the committee with it now.

CHAIR—Thank you.

Mr Tabart—Could I please say something about what I think happened as far as the Libs for Forests are concerned?

CHAIR—You can give your opinion, yes.

Mr Tabart—Mr Glenn Druery, who is the force behind Libs for Forests—and I would love to know how he got the control of the party; you probably know more about it than me—

CHAIR—Who is Mr Glenn Druery?

Mr Tabart—I think he is a property developer from Sydney. He has form in this area. He tried to get himself elected to the upper house in the New South Wales parliament by doing—

CHAIR—He lives in Sydney, does he?

Mr Tabart—He lives in Sydney, as far as I know. Yes, he does live in Sydney.

Senator BRANDIS—Another Neutral Bay person, is he?

Mr Tabart—I am not sure what suburb he is from.

CHAIR—We are just clarifying that he is not from Richmond.

Mr Tabart—He is not from Richmond, yes.

Senator BRANDIS—Are there any liberals for forests in Richmond?

Mr Tabart—I do not think there are any liberals for forests except Mr Glenn Druery.

CHAIR—Let us go on.

Mr Tabart—He tried to work a system of preference swaps to get himself elected. I believe he succeeded in getting the Shooters Party and the Outdoor Recreation Party elected, but not himself, at that particular election. He saw an opportunity, because of the Senate voting system, to be able to sort the system here. This was basically a case of trying to direct preferences to himself in the Senate. What happened in Richmond—

CHAIR—He was a Senate candidate, was he?

Mr Tabart—He was a Senate candidate. He was trying to get preferences, so he arranged this whole web. What I reckon happened in Richmond and in a number of other electorates was an arrangement of convenience. He needed to get his people out into the area to get his Senate preferences.

CHAIR—This is interesting because, unlike with the House of Representatives, with the Senate—and you would know this because the Greens have a big focus on the senate—the parties have to register their how-to-vote cards with the Electoral Commission. Are you aware—we can find out ourselves, but given you have got some local knowledge—of whether liberals for forests preferred to the Labor Party in the Senate, or vice versa? Or did they do a preference deal?

Mr Tabart—They had a very tortuous preferential system. I cannot remember it exactly, but it went through the religious parties and God knows what—pun unintended.

CHAIR—I am sure he or she does know!

Mr Tabart—I cannot say exactly where their preferences went, but they certainly did not go to the Greens first. I think they went to the ALP before they went to the Greens and I think they went to the coalition before they went to the Greens.

CHAIR—So it is conceivable that he was trying to get candidates to direct preferences to the Labor Party in key seats as a result of those preferences. It is conceivable. We do not know yet, but we can check it out.

Mr Tabart—Maybe I am into conspiracy theories, but I think it was, as I say, a deal of convenience in Richmond whereby he needed to get people on the booths to get votes coming to him in the Senate and he went to the highest bidder to see who was going to give them to him.

CHAIR—Thank you. That is useful. Mr Ciobo has a question.

Mr CIOBO—When you say that he went to the highest bidder in the House of Reps, what do you mean by that?

Mr Tabart—I have no evidence; it is merely my suspicion. But all the booth workers were paid, they were all kitted out and it was all very organised for, as you have so amply demonstrated, a party that has no presence in this electorate.

Senator BRANDIS—It is remarkable that they would go to so much trouble after not bothering to run a campaign.

Mr Tabart—That is right.

Mr CIOBO—Are you suggesting that their being kitted out et cetera was done locally by others, or are you saying that was all driven out of Neutral Bay or somewhere else in Sydney?

Mr Tabart—It is only my suspicion, but perhaps there was some local involvement in the organisation of the liberals for forests booth workers.

Mr CIOBO—When you say you have a suspicion of local involvement, who do you mean?

Mr Tabart—I think you need to draw your own conclusions there. I am not going to say.

Mr DANBY—This Mr Druery who ran for the Senate: along with the things you have advanced today, isn't it equally plausible that, looking upon this as almost a commercial enterprise, he got backpackers to do this kind of work in a number of electorates in order to benefit his Senate vote—that he was using people here in Richmond, as he was using people in other places, to direct local preferences but then also Senate preferences to him?

Mr Tabart—I believe he did, yes. I also believe that there was probably a different set of arrangements for each electorate.

Mr DANBY—Are you aware of any of the arrangements in other electorates?

Mr Tabart—No, I am not. I just heard that he did have liberals for forests people in other marginal electorates.

Mr DANBY—And he has control of the brand name of 'liberals for forests' in New South Wales. Is it registered? Is it the name of a company or political party in New South Wales?

Mr Tabart—I know that the origin of liberals for forests, as you probably do, was in Western Australia in the state election and, as I say, I would be very interested to know how he got hold of the name. I do not know.

CHAIR—Thank you very much, particularly for that additional evidence. We are running a bit behind time, but that was good evidence to get.

Proceedings suspended from 11.48 am to 12.03 pm

AVERAY, Mr Michael Brian, Divisional Returning Officer for Richmond, Australian Electoral Commission

CHAIR—Before I welcome our next witness, I want to take into evidence the brochure provided to us by the Greens in the last session. Is it the wish of the committee that the document entitled ‘Thinking of voting for the Greens?’ presented by Mrs Susanna Flower be accepted as evidence for the committee’s inquiry into the conduct of the 2004 election and included in the committee’s records as an exhibit? That has been moved by Senator Brandis and seconded by Mr Ciobo. There being no objection, it is so resolved.

I now welcome our next witness. The committee has received a couple of submissions from the AEC at the national level. However, because they do not mention the campaign in Richmond in any detail, I understand you will direct your comments to your personal experiences of the 2004 election within the electorate. Normally we ask people to make a brief opening statement based on their experience. Do you particularly want to do that?

Mr Averay—No, I do not have one prepared.

CHAIR—All right. We will move straight to questions. My questions really are just to get some facts and figures. In all fairness, I do not expect you to have all of these figures to hand. To the extent that you do have them to hand or you can give us an estimate, that would be useful. We will work on the basis that you will perhaps follow up with some supplementary material. We have heard general evidence about provisional votes. Would you be able to perhaps give us an idea of the number of provisional votes in Richmond, how that compares generally to your knowledge of other electorates, how it compares with the previous election in 2001 and what factors you think drive some of that? I hope you can remember all of that. Also, is there a marked difference in the number of provisional votes by booth throughout the electorate?

Mr Averay—On the last question, I do not have the information booth by booth. If you need it I am happy to take that on notice.

CHAIR—I would not expect you to carry it around with you.

Mr Averay—I will address the 2004 election first. I believe that you have a lot of those figures already. There were a total of 1,185 provisional envelopes submitted. When we did the scrutiny of them, 376 were rejected. Admitted to the count were 809 envelopes. I will direct my comments to the House. Those fully admitted to the House totalled 748. There were 61 House of Representatives envelopes disallowed and that was because they were partial admits—that is, we were able to count the Senate for New South Wales but people wrongly declared for the division of Richmond when they were found to be on the roll for another division within New South Wales. So the Senate papers can be counted but not the House of Representatives ones. There were some missing and there were 30 informals, so the total was 711 formal House votes in the 2004 election.

Mr DANBY—Can you tell us how the missing category arises?

Mr Averay—It is when we open an envelope and there are no ballot papers or one of the ballot papers is not in it. Someone has gone to the trouble of doing it and has sealed it up and not put the ballot paper inside it. We had seven missing there.

CHAIR—Just on that technically, I have never cast a provisional vote. I am aware of how it happens. You go to a separate table and you go through the rigmarole. You insist on voting and you are given the ballot papers and the envelope. Do you then just go to a normal booth, fill it out and bring the envelope back?

Mr Averay—The envelope stays with the issuing officer. The ballot papers are returned to the issuing officer. They are placed inside the envelope by the elector and are sealed in front of the elector if not by the elector. They are then placed into a ballot box. The reason the House of Representatives ballots are not spotted as missing is that they are quite often folded inside the rather large white Senate ones. So they are returned and placed inside those.

CHAIR—There would not be cases, do you think, where nothing is put in the envelope because it requires the joint effort, as it were, of the voter and an official from the Electoral Commission?

Mr Averay—There are occasions when the voter walks out the door.

CHAIR—But, to get to the nub of my query, they could not just go and stick their ballot papers in a normal box, could they?

Mr Averay—Unfortunately, yes.

CHAIR—So if you are a provisional voter who is not entitled to vote, you have gone through the proper process by sealing the envelope as you are required to—and, in fairness, I would point out that this is across Australia, not just in Richmond—and it was found later that you were not eligible to vote, that provisional vote would not count. But, if they go and put it in the general box, you have no way of knowing?

Mr Averay—That is correct. We do in most polling places have a person appointed as a ballot box guard to prevent them from going out the door, but it is possible. In this case we had seven missing.

CHAIR—That is seven missing off the list?

Mr Averay—Yes.

CHAIR—In general, we have heard evidence, and there has been quite a bit in the press, about how-to-vote card disagreements et cetera on the day—not that you have much control over that. But, as the returning officer, did you receive many complaints on the day about that or, for that matter, any other aspects of the campaign?

Mr Averay—Yes, we did receive complaints on the day from The Nationals with regard to liberals for forests. They were forwarded through our complaints system to central office, where

they were investigated and the response came back to The Nationals on that. There was one other instance of an improperly authorised publication being there.

Mr DANBY—Can I ask you a question specifically about that point, about the National Party's complaints about liberals for forests. Were they widespread complaints to your different returning officers in the different booths in the electorate?

Mr Averay—The complaints I am talking about came formally from the campaign manager direct to me.

Mr DANBY—Are you aware that the complaints were made by the National Party booth by booth to your returning officers in those booths?

Mr Averay—I believe there were issues raised, and the chain of command, if I can use that terminology, was to go back through their parties back to us. They did not come back direct from the booths to me.

Senator BRANDIS—Is that what they would have been advised by the returning officer at each booth—that, if there were complaints, they should be made through the National Party in a formal way?

Mr Averay—It depends on the nature of the complaint. If the complaint related to something that was outside their control, it needed to go back and come back through to me as the returning officer. If it is something to do with a local issue about where people were or access or restrictions to access, it can quite often be handled by the officer in charge.

Senator BRANDIS—The officer in charge of a polling booth has no jurisdiction or power to prohibit the distribution of an allegedly misleading how-to-vote card, does he?

Mr Averay—No. He cannot stop people, but he can provide the advice if we have passed it back to him. This was the case in 2004 on the improperly authorised one.

Mr CIOBO—Are you aware of what decision was made by the AEC central complaints with respect to the liberals for forests how-to-vote card?

Mr Averay—I have it here in documents forwarded to Mr Hall, the Federal Director of the National Party. The letter is written to him; I just have a copy of it. The response is here. I can read it out.

Senator BRANDIS—Do you have an original copy of the liberals for forests how-to-vote card?

Mr Averay—Yes, I do.

Senator BRANDIS—Can we have a look?

Mr CIOBO—Would you mind tabling that response as well?

Mr Averay—This is an unsigned copy that I have, which was given to me for information, if that is acceptable.

CHAIR—Or would it be easier to obtain a copy of the other one and just forward it to us? You do not particularly need it today, do you, for your questions?

Mr CIOBO—No.

CHAIR—It might be better, for the sake of completeness, if we leave that with you. It will still go into evidence either way, but we might as well have the official copy. You never know, it might have been a draft. I want to ask a general question. It is one we like to ask our witnesses wherever we can. It is about your experience, which we value. How long have you been the returning officer for Richmond?

Mr Averay—I assumed the role in an acting capacity just after the 2001 election.

CHAIR—What about prior to that?

Mr Averay—Prior to that I was a deputy returning officer in Richmond in the 2001 election. I have been with the commission since 1995.

CHAIR—Have you been mostly in this area?

Mr Averay—I started in the division of Adelaide for the 1996 election, and then I was—

CHAIR—They give you close ones!

Mr Averay—Yes, it was a good start.

Senator BRANDIS—You must be very good at your job.

CHAIR—I think in 1996 Adelaide was the most marginal seat in South Australia.

Mr Averay—I did the 1998 and 1999 election and referendum in the division of McPherson.

CHAIR—So you are very familiar with this part of the world.

Mr Averay—Yes, I am.

CHAIR—You would be familiar because, apart from being an electoral commissioner, you live here, work here and you are a citizen. You would be familiar with the changes that are going on demographically. You should not take this as a criticism of the organisation—we ask this wherever we go—but in hindsight are there any areas where there would be things on election day you would do differently next time now that you are forearmed with different knowledge? I do not speak specifically of the issues we have raised. In fact, I talk of things such as queues at polling booths. Were there any problems with postal votes and those sorts of mechanical issues that can make things not go as smoothly as they might?

Mr Averay—I think the election in the division of Richmond, closeness aside, ran fairly smoothly. There were occurrences on the day that were not predicted, and they ranged from having an officer in charge taking very ill and having to be replaced part way through the day to having polling booths which were oversubscribed with electors because of factors external to us. The new one at Suffolk Park, south of Byron Bay, had greater numbers than we had anticipated because of significant roadworks on the roads between there and Byron Bay.

CHAIR—I see. In other words, something beyond your control—diverted voters.

Mr Averay—But in the main everything was okay. The only other aspect, of course, is that some of the well-known polling booth locations were not available to us on the day because they had been previously booked, and I cite the example of the Tweed civic centre here, which is normally used by us and by the other levels of government. It was prebooked for a major function, so we chose to use the church hall a few hundred metres from it, and it is not as large. Voter flow was affected a little bit, but again there are circumstances outside our control. Give us fixed term elections and we will book in advance.

CHAIR—Yes, we have to do what suits the democracy. Is it fair to say that, because Richmond was such a close seat and you knew there would be a number of candidates, you were pretty forearmed for most of the difficult issues on the day so there was not that much that arose that you would regard as a problem?

Mr Averay—There were those issues that have been discussed and, other than that, no. The day went reasonably smoothly.

CHAIR—Not that I have not heard this; I just ask out of interest. Were there any well-known postal vote problems with mail houses and general postal voters and that sort of thing which affected Queensland in a major way? Did any of that affect you at all?

Mr Averay—There were aspects that affected us, but nowhere near the extent that I am aware of elsewhere.

CHAIR—You did not have that sort of catastrophe.

Mr Averay—No.

CHAIR—You were not inundated.

Mr Averay—No, we had a number of people—

CHAIR—Who were general postal voters who had not got their ballot papers or who had applied and felt that the AEC—

Mr Averay—No, I think it was more that the people who had applied and who had a limited time frame before they departed—

CHAIR—And all that was done centrally at a state level, wasn't it, until a certain point? Is that right? If someone applied for a postal vote, that was handled centrally by the AEC, I presume for New South Wales, until a certain point and then—

Mr Averay—That is right, but there were occasions where, if someone was leaving at very short notice, we could produce locally.

CHAIR—You would override.

Mr Averay—That was in discussion with the office.

CHAIR—I have one final unrelated question before I open it up to the others. Our second witness, Bronwyn Smith, raised an issue about a fax she had got from the AEC. I know it has been a short period of time; I think she said she got it on the Tuesday night. Can you shed any light on that, or is that nothing to do to with you? Do you want to come back to us in a supplementary submission?

Mr Averay—No, I am aware of it. In preparation for today, I was going back through my files and realised that I did not have a copy of the letter from central office to Bronwyn Smith. When I inquired, it was found that it had been an oversight. It was felt that it was important that Bronwyn Smith had that information prior to today so that she had an understanding of the wider issue, so it was faxed to us. On behalf of the commission—I have already spoken to Bronwyn Smith and offered her some assistance at the divisional office in understanding some of the processes after this is all over—we apologised for the delay in getting it to her. It was an oversight.

CHAIR—Thank you for that.

Mr DANBY—How many voters transited through Richmond between this election and the previous election?

Mr Averay—I am sorry, I do not have that number here. We are a high-turnover, high-growth area.

Mr DANBY—That is what I was coming to. I assume that the number is increasing because of the high growth and high turnover. While staying in Tweed Heads last night I noticed that there is a large number of units. Does that increase the turnover as well?

Mr Averay—The border is very close to here; some of those units may well be in Queensland. There is a lot of new development—for example, housing estates going in. We are a growth area, with the sea-change phenomenon. The turnover is reasonably high but so is growth from people moving into the area.

Mr DANBY—Do you know how many changes of address you had in the week after the election was announced?

Mr Averay—The totals I have here are broken down. I do not have a calculator, so, if you do not mind, I would like to add them up and give them to you afterwards.

Mr DANBY—That would be fine. Would there be a substantial number—hundreds?

Mr Averay—Yes, there are. I do have some other figures that I will be able to give you. I know we are pressed for time.

Mr DANBY—My point is that people in Richmond, like people around the rest of the country, are using the five-day period of grace we currently give them in order to make sure they are enrolled at the correct address before the election takes place.

Mr Averay—Most certainly.

Mr DANBY—What measures do you take, particularly with younger voters, to see that they are on the roll prior to a federal election?

Mr Averay—Advertising programs are put out by the AEC to encourage young people to get onto the roll, and they are ongoing. Of course, we do not know exactly when the election is going to be, so it is an ongoing process. We target high schools.

Mr DANBY—How do you target them? Do you make them aware that 17-year-olds can provisionally enrol?

Mr Averay—Yes. If we are invited to schools to give electoral presentations, we try and do an enrolment drive at the time. Otherwise, we contact the schools and provide an enrolment package.

Mr DANBY—Although you cannot give us the exact figures, would you say that a substantial number of the people who enrol in the five-day period of grace after an election is called are younger people?

Mr Averay—That would be my estimation. I would like to get those figures for you and give you an accurate figure.

CHAIR—It would assist if you could take this range of matters away and come back with some statistical information. You can do that in the coming week or so. There is no problem with that. Mr Danby, to save you time—I am not sure how previous committees have operated—when we see the AEC again nationally, I do not mind if, on behalf of the committee, you request figures electorate by electorate on this sort of material. It is all publicly available, but it is quite cumbersome to get it together, so you are welcome to do that.

Mr DANBY—I just wanted to get some anecdotal feeling on the ground as well as at the national level. But we can get the figures electorate by electorate, so we probably should.

Mr Averay—Given time, I would find the figure, but I understand that you are pressed for time. My understanding is that there are transactions by age and by state, but not by division, in submission No. 2, which I have a copy of.

CHAIR—My experience—and I am sure it is Mr Danby's experience as well—is that divisional returning officers regularly provide this sort of information on request to members.

Mr Averay—Yes, we do.

CHAIR—So, given that every member could ask for it for their own electorate, I am more than happy for the AEC to provide it. Mr Danby, I know that it might not have been provided before, but it is publicly available and I am more than happy to do that.

Mr DANBY—The government's current proposal is that, when an election is announced, there will be no further enrolments and no five-day period of grace. Are there any measures you could take to get onto the roll the hundreds of people who do take the five-day period of grace, or will they be disfranchised?

Mr Averay—I am sure—and this is an opinion on policy—that if that were the circumstance, the AEC would have to put in place a policy. I am not familiar with what contingency planning there is in that regard, and I think it is probably more appropriate that someone from central office answer that question.

Senator BRANDIS—Mr Averay, the liberals for forests how-to-vote card was the subject of a complaint to the AEC, as you have told us. That was an ex post facto complaint, wasn't it, received after the election?

Mr Averay—No, it was received on the day.

Senator BRANDIS—Was it a written complaint received on the day?

Mr Averay—Yes.

Senator BRANDIS—A determination was made by the AEC on the basis of that written complaint?

Mr Averay—Yes.

Senator BRANDIS—When was that determination made?

Mr Averay—On the day.

Senator BRANDIS—About what time on the day?

Mr Averay—I did not bring those notes with me.

Senator BRANDIS—Could you let us know?

Mr Averay—Certainly. There were two complaints. One went directly back to the complainant for expediency purposes and the other one came back through the office.

Senator BRANDIS—The determination, as set out in the papers we have here—this is the National Party's submission—reads in part:

Despite the fact that the layout and colour of the HTV card was similar to the Liberal Party's HTV card, a summary review of the card clearly indicates that the card was issued by LFF, not the Liberal Party.

I do not have a copy of the original, but does the extract I have quoted—on page 118 of the committee's briefing papers—form part of the determination that you referred to earlier in your evidence?

Mr Averay—I will see what I have with me.

Senator BRANDIS—It is the second paragraph of the quoted words, about half-way down the page.

Mr Averay—Sorry, I do not have it with me.

Senator BRANDIS—Are you familiar with that determination, though, that I have just read to you?

Mr Averay—I have seen a copy of it.

Senator BRANDIS—Who made that determination?

Mr Averay—It came from central office. By name, I cannot tell you.

Senator BRANDIS—Are you able to find out?

Mr Averay—I can make that inquiry.

Senator BRANDIS—Would you, please, and get back to us. Were you consulted in the making of that determination?

Mr Averay—No.

Senator BRANDIS—Is the usual procedure within the AEC that the DRO would not ordinarily be consulted if there were an urgent determination about a misleading how-to-vote card being made on election day?

Mr Averay—I do not know. It is a policy matter. As we have heard before, this is my first election, and so I do not know the answer; I am sorry.

Senator BRANDIS—There is no criticism of your involvement in this. There might have been if you had made the determination—but you did not. When you said 'central office', did you mean the AEC in Canberra or in Sydney?

Mr Averay—I forwarded it to the AEC in Sydney. That was our protocol on the day and it was then forwarded to the AEC in Canberra.

Senator BRANDIS—How was it forwarded?

Mr Averay—I faxed it.

Senator BRANDIS—Do you know how it was forwarded from Sydney to Canberra?

Mr Averay—I do not know.

Senator BRANDIS—Was the copy of the how-to-vote card transmitted by fax transmitted in black and white or full colour?

Mr Averay—Black and white.

Senator BRANDIS—I want to take you through this and make a point. The complaint is a complaint under section 329 of the Electoral Act, isn't it? The how-to-vote card, it is alleged, 'is likely to mislead or deceive an elector in relation to the casting of a vote'. Those are the words of section 329.

Mr Averay—You have it in front of you.

Senator BRANDIS—And the decision maker has said:

Despite the fact that the layout and colour of the HTV card was similar to the Liberal Party's HTV card, a summary review of the card clearly indicates that the card was issued by LFF, not the Liberal Party.

The first point to be made is that whoever was the decision maker was not able to make a judgment about the colour of the card, were they, because they did not have a copy of the original; they had a black-and-white fax.

Mr Averay—It is my understanding that the complaint that I forwarded was not the only one received. I am not in a position to say whether they did in fact have a colour copy from somewhere else or not. The colour copy you have was handed to me after the day. It was not the one sent to me as the complaint. The complaint was actually faxed to me as well, so it came to me in black and white.

CHAIR—And that is because you were in your office.

Mr Averay—I was in my office.

Senator BRANDIS—I want to make the point that here we have a photocopy in black and white of this how-to-vote card, and here we have your copy of the how-to-vote card in full colour. When you see the full colour copy of the how-to-vote card, it makes a strikingly different impact on the eye than just a black-and-white copy. There are more varieties of difference because of the different colours used in different parts of the layout, of course. Would you agree?

Mr Averay—One is in colour and one is in black and white—yes, there is a difference.

Senator BRANDIS—But my point is there is more to it than that.

Mr DANBY—There's more!

Senator BRANDIS—In giving the grounds for the decision, the person who made this decision merely says:

... a summary review of the card clearly indicates that the card was issued by LFF, not the Liberal Party.

That is the nearest we get to a reason for the decision in this determination. First of all, whoever made that decision applied the wrong test, didn't they, because the test does not invite the question of whether or not on a summary review the card clearly indicates who issued it but rather whether the card is likely to mislead or deceive an elector. Do you agree?

Mr Averay—I am not a lawyer. I am not fully familiar with exactly what the people making the decision had at their disposal in Canberra. We followed our procedure—we faxed to them what was faxed to us—and a decision was made based on the information they had at hand. As I said, I do not believe we were the only division that forwarded that complaint.

Senator BRANDIS—We will pursue this, but my point is that, if you read this carefully or even if you read it with a reasonable level of scrutiny, it is obvious that it is the how-to-vote card of liberals for forests, because it says so at the top and it identifies liberals for forests in the highlighted extract from the Senate voting card. Those are the only two places where liberals for forests are mentioned, but if you read this carefully you would see that it is a liberals for forests how-to-vote card, wouldn't you?

Mr Averay—I am not sure exactly where you are going with this, because from the returning officer's point of view it was a how-to-vote card that was deemed to be acceptable. I did not have a copy until that evening. I am not sure of the relevance.

Senator BRANDIS—The point I am trying to draw out is that it is all very well to say that if you looked at it carefully it does say it is a liberals for forests how-to-vote card, but you would know from your own experience as a returning officer, wouldn't you, that most electors do not look at these things carefully. They look at the biggest writing on the page and they get an impression of the format and think, 'That's the Liberal how-to-vote card,' or, 'That's the Labor how-to-vote card,' as the case may be.

Mr Averay—I am an electoral administrator—I deal in the facts. That is an assumption I am not prepared to make on behalf of electors.

Senator BRANDIS—I can understand you being circumspect and I do not criticise you for it, but in your experience you must be aware that electors in casting their ballots very commonly do not look carefully at the how-to-vote card. Or are you being so circumspect that you will not even join me in that?

Mr Averay—No, I will not join you in it, if you do not mind, because that is an assumption about the thought processes of an elector and I do not get that involved in our secret ballot process.

Senator BRANDIS—All right, you are not able to speak to that. I am very familiar with the Liberal Party's how-to-vote card of the last election. Of course, there was not a Liberal Party vote card in Richmond. That begs another question of how the comparison with a Liberal how-to-vote card was made by the decision maker, but we will track him or her down and ask them that. It is not merely the highlighting of the word 'Liberals' on this how-to-vote card; it is the fact that the large, bolded, italicised, sans serif typeface 'Liberals' was the same as the Liberal Party's how-to-vote-card. It is the fact that the banner along the bottom saying, 'Making Australia a better place to live' in the same bolded, italicised sans serif layout of blue on gold was the same as the Liberal Party's how-to-vote card. It is the fact that the stylised representation of a House of Representatives ballot paper on the left-hand side of the how-to-vote card and reproduced in pale green colour was the same as the Liberal Party's how-to-vote card. It is the fact that the instruction for how to vote for the House of Representatives in the dark blue box with white writing in sans serif bolded print in an oblong shape with a triangular arrow pointing to the preferred candidate was the same as the Liberal Party's how-to-vote card.

It is the fact that there was a photograph right in the middle of the how-to-vote card—albeit of Mr Druery, not of Mr Anthony or of Mr Howard but, nevertheless, the positioning of a photograph in front of an Australian flag—was the same as the Liberal Party's how-to-vote card. It is the fact that the representation of the sample Senate how-to-vote card on pale lemon with an extract from the Senate how-to-vote card and the relevant portion of the Senate how-to-vote card artificially made larger to draw attention to it was the same as the Liberal Party's how-to-vote card. It is the fact that the instruction as to how to fill out the Senate ballot paper, which was white on dark blue in a long ellipse with an arrow pointing to the relevant portion of the how-to-vote card, was the same as the Liberal's how-to-vote card. In colour, layout, typeface and every respect one can imagine, this is a deliberate attempt to conjure the Liberal Party's how-to-vote card, isn't it, or are you not able to speculate?

Mr Averay—I did not see a Liberal how-to-vote card. I will take your word for it. On your comparison, I make no comment. I have no knowledge on that.

Senator BRANDIS—Let me finish. As far as I can imagine, there are at least six variables you could have for a how-to-vote card. There may be more, but I can think of six: thickness, so it could be card or flimsy; size, which is probably not important, because most how-to-vote cards these days are in A4 size—

Mr DANBY—Size does not matter.

Senator BRANDIS—Size does not matter, as Mr Danby points out. The others are layout, typeface, colour, and text. In all respects, save for the use of the words 'for Forests' in two places—which an elector taking a glancing look at this how-to-vote card may well not notice—this document was identical to the Liberal how-to-vote card. My question to you is: if you had a how-to-vote card which in layout, size, thickness, typeface, colour and, for all material purposes, text was the same as another party's how-to-vote card, how could that not be misleading?

Mr Averay—The decision was made in Canberra by people who interpret the act and the other elements of it. As I stated before, I do not know what they had at their disposal at the time. I again go back to the fact that I have no comment on it. We asked the question and we were

given a response. It was deemed to be an acceptable how-to-vote card. That card was used in the division of Richmond, and there were no Liberal how-to-vote cards to use as a comparison.

Senator BRANDIS—Thank you.

Mr DANBY—Senator Brandis, we are looking at the slogan at the bottom in blue sans serif writing on yellow—

Senator BRANDIS—Italicised and bolded.

Mr DANBY—Is that the Liberal Party slogan that was used?

Senator BRANDIS—That or substantially similar words were used on the bottom of the Liberal Party how-to-vote card.

Mr DANBY—So it might have been slightly different.

Senator BRANDIS—Slightly.

CHAIR—But you would not notice at a glance.

Mr CIOBO—Out of interest, did the candidate or any representatives from liberals for forests turn up at the ballot draw?

Mr Averay—No.

Mr CIOBO—What about to lodge the nomination?

Mr Averay—No. It was a bulk nomination lodged in Sydney.

Mr CIOBO—Did you ever have reason to contact the candidate for liberals for forests in Richmond?

Mr Averay—On a couple of occasions, when we distributed the material that we distribute to all candidates, I spoke to the candidate's contact person on the information given to me on the nomination form. But, no, did I not speak to the candidate.

Mr CIOBO—Was the person that was listed for contact based in Richmond or elsewhere?

Mr Averay—I believe he was based in Sydney. I cannot be sure. I can check that, because I have the contact phone number, but my recollection is that he was based in Sydney.

Mr CIOBO—Did the candidate for liberals for forests herself ever contact you?

Mr Averay—No.

Mr CIOBO—Do you undertake any checks to determine eligibility with regard to candidates that stand for office or is that done on the basis of their declaration?

Mr Averay—It is done on the basis of their declaration. They make that declaration and we cannot challenge it. I have mentioned before that it was done as a bulk nomination, so those other formality checks were done in head office in Sydney.

CHAIR—I give my appreciation for your evidence today and for staying a little bit longer. That has been most useful. Thank you for coming along and answering questions. We appreciate that you are not able to answer every question, if only for the fact that you were not the decision maker in every regard.

Mr DANBY—I think Mr Averay was being used as a peg to get hold of information on the record.

CHAIR—It has been useful. It would be great if you, in liaison with the AEC generally, could follow up with some of the detailed answers to some of those questions. If there is anything else you would like to add on reflection—often after these things you think of something you might have mentioned—you are more than welcome to add that in a supplementary submission. We are hearing from the AEC in Canberra on Friday, 5 August, which is just before we resume sittings. That is basically the timetable. So it would be useful if you could do that any time in the next week or two.

Resolved (on motion by **Mr Danby**):

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 would like to thank all of the witnesses who have given evidence today at the public hearing.

Committee adjourned at 12.43 pm