

PARLIAMENT OF NEW SOUTH WALES



# Joint Standing Committee on Electoral Matters

## STUDY TOUR OF INTERNATIONAL JURISDICTIONS

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Malta, Dublin and New York



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## FUNCTIONS OF THE COMMITTEE

- (1) That a Joint Standing Committee, to be known as the Joint Standing Committee on Electoral Matters be appointed.
- (2) That the Committee inquire into and report upon such matters as may be referred to it by either House of the Parliament or a Minister that relate to:
  - (a) The following electoral laws:
    - (i) *Parliamentary Electorates and Elections Act 1912* (other than Part 2);
    - (ii) *Election Funding Act 1981*; and
    - (iii) those provisions of the *Constitution Act 1902* that relate to the procedures for, and conduct of, elections for members of the Legislative Assembly and the Legislative Council (other than sections 27, 28 and 28A);
  - (b) The administration of and practices associated with the electoral laws described at (a).
- (3) All matters that relate to (2)(a) and (b) above in respect of the 22 March 2003 State election, shall stand referred to the Committee for any inquiry the Committee may wish to make. The Committee shall report on the outcome of any such inquiry within 12 months of the date of this resolution being agreed to by both Houses.
- (4) That the Committee consist of seven members, as follows:
  - (a) three Members of the Legislative Assembly of whom:
    - (i) three must be Government members, and
  - (b) four Members of the Legislative Council of whom:
    - (i) one must be a Government member,
    - (ii) two must be an Opposition member, and
    - (iii) one must be a Cross-bench Member.
- (5) That the members be nominated in writing to the Clerk of the Legislative Assembly and the Clerk of the Legislative Council by the relevant party leaders and the cross-bench members respectively, within seven days of this resolution being agreed to by both Houses. In the absence of any agreement concerning Legislative Council representation on the committee the matter is to be determined by that House.
- (6) That notwithstanding anything contained in the Standing Orders of either House, at any meeting of the Committee, any four members of the Committee will constitute a quorum, provided that the Committee meets as a joint committee at all times.
- (7) That the Committee have leave to sit during the sittings or any adjournment of either or both Houses.
- (8) That the Committee have power:
  - (a) to send for and examine persons, papers, records and things,
  - (b) to adjourn from place to place,
  - (c) to make visits of inspection within the State of New South Wales and elsewhere in Australia, and
  - (d) to take evidence in accordance with the provisions of the *Parliamentary Evidence Act 1901*.
- (9) That the Committee have leave to report from time to time.
- (10) (a) That if either House is not sitting when the Committee wishes to report, the Committee have leave to send any such report, minutes and evidence to the Clerk of each House.

- (b) A report presented to the Clerk is:
- (i) on presentation, and for all purposes, deemed to have been laid before the House,
  - (ii) to be printed by authority of the Clerk,
  - (iii) for all purposes, deemed to be a document published by order or under the authority of the House, and
  - (iv) to be recorded in the official proceedings of the House.



## TERMS OF REFERENCE

### **Inquiry into the administration of the 2003 election and related matters**

(1) That the Joint Standing Committee on Electoral Matters inquire into and report on all aspects of the conduct of the 2003 NSW Election and related matters, including but not limited to:

- the role of the State Electoral Office;
- the consistency of procedures used, and rulings made, by District Returning Officers;
- postal voting, including an examination of inconsistencies between State and Federal postal voting legislation and procedures;
- the criteria used for the designation of pre-poll voting places; and
- procedures and provisions relating to the confirmation of enrolment.

(2) That in conducting its inquiry into the 2003 election the committee include for examination and report:

- (a) the problems associated with the finalisation of the counting of votes in the Legislative Council periodic election, and in particular-
  - the identification of the nature of the problems
  - ascertaining why the problems occurred
  - ascertaining why the problems were not identified earlier
  - ascertaining what can be done to ensure that such problems do not occur again
  - any other relevant matter in addressing these problems;
- (b) the changes to the Legislative Council voting system that applied for the first time at the 2003 periodic election, such as, group voting squares; and
- (c) the counting of preference votes, including random sampling.

NB: The Committee is precluded from inquiring into Part 2 of the *Parliamentary Electorates and Elections Act 1912* and sections 27, 28 and 28A of the *Constitution Act 1902* which concerns the distribution of electorates.



## CHAIRMAN'S FOREWORD

This report provides the public record of the overseas study tour undertaken by a delegation of the Joint Standing Committee on Electoral matters from 29 June to 9 July 2005. The delegation comprised Dr Arthur Chesterfield-Evans and myself, accompanied by Stephanie Hesford, Senior Committee Officer. The study tour was undertaken in relation to the Committee's inquiry into the administration of the 2003 election and related matters.

The Committee's inquiry considered the role of the State Electoral Office, issues surrounding postal votes, scrutineers and the method used to count votes for the Legislative Council, which is entrenched in the *Constitution Act 1902* (NSW).

Under the current provisions Members of the Legislative Council are elected under an optional preferential proportional representation method of voting. In order to be elected candidates need to obtain a quota and any votes a candidate receives above this quota are known as surplus votes. These are transferred to the remaining candidates in the order of preference indicated. The ballot papers transferred are selected at random.

New South Wales is one of only two jurisdictions in the world that use the random sample method to transfer surplus votes rather than count all preferences. In order to assist the Committee in addressing the issues raised in evidence and to formulate recommendations, the Committee visited Ireland where random sampling is used in the transfer of surplus votes and Malta where a proportional representation – single transferable vote (PR-STV) system is in place with a combination of methods used to transfer surplus votes.

The delegation met with electoral officials in both Ireland and Malta and with members of Parliament, parliamentary and party officials to obtain a parliamentary perspective of the electoral systems. The delegation also met with the Independent Commission on Electronic Voting and Counting at Elections and academics from Trinity College Dublin that have extensive knowledge on the single transferable vote system.

In Malta, the delegation was informed that the counting and transferring of votes is complex and combines a number of methods. Surplus votes of candidates who are elected on first preferences are transferred in proportion to the next ranked candidates after all votes have been examined. In cases where candidates are elected by transferred votes, there is a direct transfer of surplus votes from the last sub-parcel of ballots received by an elected candidate.

The delegation was also advised that five main electoral issues are currently dominating discussion in Malta. These include lowering the threshold currently at 16.7% per district to 7% nationally and increasing the number of districts.

In Ireland the issue of abolishing random sampling has recently been considered in the context of electronic voting. The delegation was informed that there have been moves towards e-voting since the late 1990s due to criticisms of the way surplus votes are transferred and problems with the manual system. Under the proposal for e-voting it was envisioned that the method for transferring votes would move to a full distribution using fractional methods. However, the project has stalled due to problems being identified with the proposed software and potential security weaknesses.

The delegation was also advised that electoral legislation in Ireland is complex and that there is no independent electoral commission responsible for the administration of electoral laws. The Franchise Section of the Department of the Environment, Heritage and Local Government is responsible for the conduct of elections and a number of ad hoc commissions are established in relation to election expenditure and the distribution of boundaries.

The delegation also travelled to New York and met with officers of the Electoral Assistance Division of the United Nations and academics to discuss broader issues of election systems and practices in relation to the administration of elections in New South Wales.

The United Nations commented that whilst elections are not a contest of equals that the role of independent electoral commissions is to ensure the playing field is equal. It was also commented that electoral systems must work within the political party system but that democratic governments should not have the power to change electoral laws to favour themselves.

The United Nations also commented on many of the issues that were raised in the Committee's inquiry into the administration of the 2003 election and related matters, including training provided to scrutineers, the designation of polling places, the registration of how-to-vote material, resources for electoral commissions and postal voting.

The Committee reported on its inquiry in September 2005 and has made 34 recommendations including that consideration be given to abolishing the use of random sampling when transferring surplus votes in Legislative Council elections.

I would like to extend my thanks to all the members, officials and academics that we met and for their time and hospitality in meeting with us.



Marianne Saliba MP  
Chairman







# Chapter One - Malta

## **BACKGROUND**

- 1.1 Malta elects its national legislature using a proportional representation – single transferable vote (PR-STV) method. This form of voting was introduced in Malta in 1921.
- 1.2 There are multi-member constituencies. Five members are elected from 13 electoral districts and each district has approximately 20,000 voters.
- 1.3 Under Malta’s implementation of STV the same number of seats are filled from each district, candidates are allowed to compete in more than one district and candidates are grouped by party on the ballot paper but voters cannot vote for parties directly.
- 1.4 There is also a mix of methods used for transferring votes. Vote counting combines fractional transfer and direct transfer of surplus votes from the last sub-parcel of ballots received by an elected candidate. Fractional transfer is used where a candidate has been elected with original (first preference) votes only, the alternative method is employed in all other cases.
- 1.5 Malta is predominantly a two-party system. The major parties are the Nationalists (PN) and the Labour Party (MLP). Since 1971 the two major parties have dominated the electoral arena with no serious competition from any other Party. The most recent third-party challenge has come from the Alternattiva Demokratika. However, the party only polled 1.7% of the vote in the 1992 election and has fared even worse in recent elections.
- 1.6 All elections since 1971 have been close contests between the two major parties. A number of elections throughout the 1980s and 1990s highlighted a systemic disproportionality between the percentage of votes and seat percentages gained by political parties. In these elections the party that had actually obtained the majority of the popular vote was not rewarded with the majority of seats in the Parliament (1981, 1987 and 1996).
- 1.7 Constitutional amendments were adopted in 1987 and applied to the elections held in 1987 and 1996 to assure “governability”. These amendments provide for the party with a majority of the popular vote to be awarded a sufficient number of additional seats to give it a legislative majority.

## **PARLIAMENT OF MALTA**

- 1.8 The delegation paid a visit on the Parliament of Malta and was given a tour by the Senior Clerk-Assistant Ms Josanne Paris before proceeding to meet with members of the Parliament and Party officials.

## **Profile**

- 1.9 The Parliament of Malta is unicameral. Under the Constitution of Malta the Parliament consists of the President and a House of Representatives. The system of Government was created by the British and accordingly is founded on the principles of Westminster.

- 1.10 There are 65 members in the House of Representatives. There is no set number of members provided for in the Constitution but the membership of the House must be an odd number. In addition, more than 65 members may be elected in accordance with the governability provisions of the Constitution.
- 1.11 The President is elected by a two-thirds majority of the Parliament and has a similar role to Governor of New South Wales in that the President assents to legislation and has a ceremonial role only. The President has a 5 year non-renewable term.

## **Notes of discussion**

- 1.12 Participants: The Hon. Dr Tony Abela MP, Parliamentary Secretary to the Prime Minister, Dr Victor Scerri, President of the Nationalist Party General Council, Mr Henri Darmanin, Director Elcom, Nationalist Party, The Hon. Joe Mizzi MP, Opposition Whip and Dr Michael Falzon, Deputy Leader (Party Affairs), Labour Party of Malta.
- 1.13 Members of the House of Representatives are elected under the principle of proportional representation by means of the single transferable vote from 13 districts. There are approximately 20,000 voters per district. Under constitutional provisions each district may elect between 3 and 7 members. However, under the current arrangements each district returns 5 members. The quota for a candidate to be elected is 16.7% of the vote (approx. 3,800 votes).
- 1.14 It was noted that the constitutional amendments that were adopted in 1987 and 1996 seek to assure “governability” by providing for a one party legislative majority even at the expense of proportionality.
- 1.15 Each district is represented by different parties. It is argued that this “pure representation” provides constituents with choices. It was also noted that Malta has a 96% voter turnout for National elections.
- 1.16 Boundary changes are made every 2 – 5 years. The percentage of votes between the two major parties is so low that the change in the boundaries can often determine which party will win government. Constitutional provisions specify how boundaries are to be distributed and include such criteria as population shifts. The Electoral Commission determines the boundaries.
- 1.17 There was some discussion at the time of the delegation’s visit regarding the threshold required to be elected and whether it should be lowered. This would make it easier for third parties to be elected.
- 1.18 Candidates can contest two districts and if elected for both districts must resign one of the seats.
- 1.19 If an elected official dies a by-election is held to replace the member. Voters do not have to vote again rather there is a re-count of preferences of the votes from the general election and the next candidate with the most votes is elected. However, if a person who was elected at the by-election retires or dies the replacement is chosen by the party.
- 1.20 It was noted that there is no provision for postal votes under the electoral legislation in Malta.

## THE ELECTORAL COMMISSION AND ELECTORAL OFFICE

### Profile

- 1.21 The Electoral Commission is an independent body established under section 60 of the Constitution of Malta. Members of the Commission are appointed by the President acting in accordance with the advice of the Prime Minister, after consultation with the Leader of the Opposition.
- 1.22 The Commission consists of 8 members (4 nominated by the Government and appointed by the President and 4 appointed by the Government on the recommendation of the Leader of the Opposition) and the Chief Electoral Commissioner is the Chairman. The Commissioner is appointed by the Government for a three year term.
- 1.23 The main functions of the Commission are the revision of the electoral boundaries and the conduct of elections and referenda. In addition, the Commission is responsible for compiling, maintaining and publishing electoral registers for a general election, local council elections and elections for the European Parliament.
- 1.24 The Commission is also responsible for the Electoral Office. The Office provides the administrative machinery and resources needed by the Commission to fulfil its obligations including the registration, transfer and cancellation of voters and organisation of elections. The Head of the Electoral Office is the Chief Electoral Commissioner.
- 1.25 Another function of the Electoral Office is the issue of Identity Cards. The Office receives the applications, processes the information and prints the ID Cards. The information collected in connection with the ID Card serves as the basis for the compilation and updating of the electoral registers.

### Notes of discussion

- 1.26 Participants: Mr Carmel De Gabriele, Chief Electoral Commissioner and Chairman of the Electoral Commission and Mr Joe Calleja, Secretary to the Electoral Commission.
- 1.27 It was noted the Constitution provides that an absolute majority of the members in Parliament must agree to amend the electoral system, as opposed to many jurisdictions where electoral changes can only be made through referenda.
- 1.28 In Malta provision is made for citizen initiated referenda. Under these provisions 10% of the registered voters can sign a petition calling for a referendum. Citizen initiated referenda can only call for the repeal of existing legislation and certain statutes cannot be abrogated under this procedure such as constitutional provisions, electoral legislation and fiscal legislation.
- 1.29 In relation to electoral districts, it was noted that there are 13 electoral districts in Malta. Each district must be within 5% of the national average of electors per district.
- 1.30 Under Constitutional provisions the Commission is required to review boundaries 2 years after an election and must determine new boundaries within 5 years based on projected population shifts.

- 1.31 It was noted that in addition to population shifts that one of the criteria used when allocating boundaries is geographical vicinity. The Commission makes every attempt to keep whole localities within the one district if possible.
- 1.32 The Commission's report on proposed boundaries goes to the Parliament. The Parliament can either adopt them or recommend changes to the proposals. The Commission does not have to adopt any recommendations made by the Parliament in accordance with section 61 of the Constitution of Malta.
- 1.33 The delegation was advised that there are currently 5 members per district (even though constitutional provisions enable 3 – 7 members). Most districts are split 3 to 2 between the two major parties.
- 1.34 The system of PR-STV is set out in the Constitution. However, provisions in relation to the conduct of elections, including those that apply to candidates and the actual method for counting the votes is set out in the General Elections Act.
- 1.35 A manual count of all the votes is done by the Commission and this is then checked by a computer. It was noted that the manual count is preferred by the political parties.
- 1.36 The Chief Electoral Commissioner indicated there is a full distribution of votes in the count. When a candidate has been elected with first preference votes the next available preference on all votes credited to the elected candidate are examined and the surplus is transferred in proportion to the strength of these next ranked candidates. In cases where candidates have been elected by transferred votes, there is a direct transfer of surplus votes from the last sub-parcel of ballots received by an elected candidate.
- 1.37 The quota for electing candidates to Parliament is determined by dividing the number of valid votes by 6. The Electoral Commission advised that parties or candidates usually call for 2 or 3 recounts each election.
- 1.38 The delegation were informed that ballot papers list candidates alphabetically according to political parties with Independents listed last on the ballot paper.
- 1.39 The Commission provides scrutineers with informal guidelines and there is an "understanding" with both parties about how scrutineers will operate. Scrutineers are physically separated by a perspex barrier from the counting of votes at the central counting location but can complain or protest to the Commission if they are of the view that votes have been counted incorrectly. The decision as to whether a vote is invalid rests with the Commission.
- 1.40 The system of voting in Malta is optional preferential voting. Voters can choose as few as one candidate or as many as they wish. If numbers are repeated the vote is deemed to be valid up to where the repetition occurs rather than being deemed invalid as would be the case in New South Wales.
- 1.41 The Commission noted that only a very small percentage of voters are swinging voters at each election. Elections have traditionally been close contests with approximately 20,000 swinging voters or "floating votes" that determine the Government. It was noted that traditionally families have supported particular parties but that the new generations are rebelling against this tradition and are choosing to vote for who they want rather than who the family have always supported.

- 1.42 The delegation was advised that the Commission reports to the Parliament after each general election on the administration of the election including the costs involved in running it. The Electoral Commissioner noted that this reporting facility enables him to raise issues that need to be addressed such as boundary problems or problems with electoral laws and that a general election costs over 1 million Maltese Pounds to run (approx. AU\$4 million).
- 1.43 It was noted that, how-to-vote material does not need to be registered with the Electoral Commissioner or the Electoral Office but it cannot be brought into the polling booths. There is a 50-metre prohibition on such material being distributed or displayed at polling places and there is a blanket ban on all political advertising the day before an election.

## **LABOUR PARTY OF MALTA**

### **Profile**

- 1.44 The Labour Party of Malta is party in opposition in Malta. At the 2003 general election the Party won 30 of the 65 seats in the House of Representatives with 47.5% of the vote.
- 1.45 The Party was founded in 1949. It was last in Government from 1996 – 1998. The political ideology of the Party is social democracy.

### **Notes of discussion**

- 1.46 Participants: Dr Michael Falzon, Deputy Leader (Party Affairs), Labour Party of Malta.
- 1.47 It was noted that the political parties are very involved in the electoral system in Malta. Parties have a person at each booth acting as a scrutineer and also as a party agent. The parties also appoint people to oversee the printing of ballot papers and the counting of votes.
- 1.48 In addition, parties also supervise the issue of voter identification, which is issued to voters at each election by the police. It was noted that voters can collect their ID cards from the Electoral Commission the day prior to the election if they have not received it from the police.
- 1.49 Malta has a five-week election campaign period with the dissolution of Parliament to election day being a clear 34 days. It was also noted that the maximum period of a Parliament is five years and that the Prime Minister can call an election at anytime within this period as there is no minimum term.
- 1.50 Dr Falzon advised the delegation that there are currently five main electoral issues dominating discussion in Malta:
- Keeping the island of Gozo as one district: Under the Constitution, districts are to be with 5% of the average number of electors per district. Gozo is heading towards being 7% above the average. However, there are concerns about making a section of the island a part of another district on the mainland;
  - Lowering the national threshold: The national threshold is currently at 16.7% per district. There has been discussions about making it 7% nationally. This will enable smaller parties a greater chance to be elected;

- Proportional representation: Disproportionality (a mismatch between a party's percentage of the popular vote and its percentage of legislative seats) has always been a factor in Maltese elections. The Labour Party is of the view that there is a need for the parliamentary seats of a political party to be proportional as far as possible to the votes gained by the party in the first count. The Commission on the Electoral System (the Gonzi Commission) was appointed in 1994 to consider amongst other things, the issue of the proportionality of votes to legislative seats. The Commission recommended a method for counting the votes that would ensure proportionality. However, no agreement was reached by the political parties on the matter.
- Increasing the number of districts: If the issue regarding proportionality is agreed to, the Labour Party want to increase the number of districts. Under the constitution there can be any number of districts between 11 and 50;
- The "governability" rule: Under the current arrangements if a party has a relative majority of first count votes it is given a majority of seats in the Parliament by 1. If more than two parties are elected to parliament the constitutional safeguards on governability do not apply and the party with the relative majority could end up in opposition. Labour want to see a change so that if three parties are in the Parliament and the larger party of the three has over 45% of the vote it will be given enough seats to govern.

1.51 The Labour Party are of the view that consensus will be reached on the first 4 issues but not on the 5th issue.

## **LEADER OF THE OPPOSITION**

### **Profile**

1.52 Dr Sant first entered Parliament in 1987. He was elected as Leader of the Labour Party in 1992 and became Prime Minister in 1996 when the Party won the election. Party problems forced him to call early elections in 1998, which the Party lost. The Party lost the elections in 2003 and Sant resigned however he was overwhelmingly re-elected Leader.

### **Notes of discussion**

- 1.53 Participants – Dr Alfred Sant, Leader of the Opposition, Labour Party of Malta, Mr Jason Micallef, Secretary-General, Labour Party of Malta, Mr Joe Mifsud, International Secretary, Labour Party of Malta.
- 1.54 Dr Sant talked about the "governability" constitutional amendment that was introduced in 1987. Under this system the party with the majority of the votes is given extra seats to enable them to govern. It was noted that this results in the Government gaining more seats than the vote and does not reflect the proportionality of the vote.
- 1.55 The Labour Party is of the view that greater proportionality is required between the seats and the votes.



- 1.56 It was noted that there are 13 districts with 20,000 voters per district. Candidates require approx. 3,800 votes to be elected in a district. Candidates of parties compete against one another as well as against candidates from other parties (as is the case in Tasmania).

## Chapter Two - Dublin

### **BACKGROUND**

- 2.1 The system of voting in Ireland for all elections is PR-STV. For elections to the Dáil (the lower house of Parliament) there are multi-seat constituencies (3, 4 and 5 seat constituencies).
- 2.2 This means that the quota to be elected to the House is not the same for each district. The quota is determined by dividing the total valid poll by one more than the number of seats to be filled, ignoring any remainder and then adding 1 vote. For example, in a 4-seat constituency with 50,000 votes cast, the quota is 10,001.
- 2.3 Surplus votes for elected candidates or the votes cast for candidates who are eliminated are transferred to the voter's next choice on the ballot paper, in proportion to the total number of transferable votes. Where a candidate is elected at the second or at a later count, only the votes that brought him/her over the quota are examined in the surplus distribution, i.e., the parcel of votes last transferred to the elected candidate. Random sampling is used to transfer surplus votes.
- 2.4 The multi-member constituencies enables smaller parties a greater chance of having candidates elected and is the main reason that coalition governments have become the norm in Ireland today.
- 2.5 In Ireland there is no "above-the-line" voting rather they have what are called "open party lists" where voters vote for candidates rather than a party. Candidates are listed alphabetically on the ballot paper with their party underneath and beside their name is a photograph.
- 2.6 A system of optional preferential voting is in place so that voters can choose to vote for as few or as many candidates as they desire. Voting in the Republic of Ireland is not compulsory and turnout is 59%. This figure has been slowly declining in recent times.
- 2.7 A general election must be held within thirty days after the dissolution of the Dáil. The Minister in charge of electoral legislation appoints the polling day which, must be between the 18th and 25th day after the issue of the writ. Polling day can be any day of the week and polling places must be open for at least 12 hours between the hours of 7.00 a.m. and 10.30 p.m.

### **FRANCHISE SECTION, DEPARTMENT OF THE ENVIRONMENT, HERITAGE AND LOCAL GOVERNMENT**

#### **Profile**

- 2.8 The Franchise Section of the Department of the Environment, Heritage and Local Government is responsible for the registration of electors and the conduct of elections and referendums. The Section is also responsible for developing policies in relation to electoral matters and legislation relating to elections.
- 2.9 The Franchise Section is a small office with 10 staff and 2 policy officers. When elections are conducted the small team is complimented by polling officials who are drawn from the registrars of the Courts in the local constituencies.

## Notes of discussion

- 2.10 Participants: Mr Maurice Coughlan, Principal, Franchise Section and Mr Dave Walsh, Assistant Principal, Franchise Section.
- 2.11 The delegation was advised that the electoral laws in the Republic of Ireland go back to the beginning of the State in 1923. It was noted that electoral legislation is very complex even though there was a comprehensive consolidation of the laws during the 1990s.
- 2.12 It was also noted that there have been many amendments since the consolidation exercise especially in relation to the control of expenditure by and donations to candidates/parties. The ceiling on expenditure by candidates is approx. €30,000.
- 2.13 In relation to the administration of electoral laws the delegation was advised that there is no independent electoral commission. Rather, there are a number of ad hoc commissions such as the standards and public office commission, which looks at expenditure.
- 2.14 It was noted that whilst the Franchise Section is the principal returning officer for Presidential elections that for elections for the Dáil the returning officers are officers of the courts/sheriffs.
- 2.15 County registrars are responsible for administering elections at the local level with support from local authorities. The Franchise section issue detailed regulations and guidance manuals to ensure consistency and best practice.
- 2.16 The boundaries for constituencies must be revised at least once every twelve years although with census data being a precursor to any change in boundaries. Changes are determined by a Commission made up of the Clerks of both Houses of Parliament, the Ombudsman and the Franchise section act as the secretariat to the Commission.
- 2.17 The Commission invites submissions from parties and these submissions are put on public display. Parties cannot lobby members of the Commission. It was also noted that the redistribution of boundaries was previously conducted by Ministers until a Labour gerrymander backfired.
- 2.18 It was noted that the multi-member constituencies must have 3 – 5 representatives. There is a representative for each 20,000 – 30,000 people. Constitutional provisions specify that each district must be 5% of each other in terms of those people eligible to vote per district. It was also noted that these conditions have been reiterated in case law.
- 2.19 The delegation was advised that there is an attempt by the Commission to maintain county boundaries for constituencies as far as practical, and that in the past 25 years there has been no rejection of the Commission's reports by the Parliament.
- 2.20 It was noted that academics have been the major critics of the electoral system arguing that the proportional representation system has created localism in politics.
- 2.21 Despite this lack of widespread criticism it was noted that the administration of elections in Ireland has a number of flaws as the system has been in place since 1923. For instance, it was noted that there is no system of accountability as the administration is spread across local counties and there is limited central control. This

means that if candidates/parties are unhappy with decisions taken at the local level the only option is to go to the courts.

- 2.22 There are very few requirements or limitations in relation to how-to-vote material. Material does not need to be registered with the Franchise Section or at the local level but there is a prohibition on the distribution of how-to-vote cards 100 metres from a polling place. However, it was noted that posters can be displayed at the polling place.
- 2.23 The delegation were advised on the quota system used for elections. It was noted that few candidates are elected on first preference votes and that surplus votes are transferred using the random selection method. The delegation was advised that this literally meant those ballot papers that are physically on top of the pile of votes for any candidate that are in surplus of the required quota.
- 2.24 Random selection has been criticised but the Franchise section are of the view that the sample chosen randomly is big enough to be considered a fair representation. The method is a short-cut to achieve a quick result under a manual count.
- 2.25 There has been discussion on removing random sampling if electronic voting is brought in for elections but whilst this has been considered it has not been moved on. The Department embarked on an e-voting project in the late 1990s due to problems with the manual system and criticism of the way surplus votes were transferred. It became a big political issue.
- 2.26 The delegation was advised that the idea was that when e-voting was implemented that at first random sampling would be retained but then the method for transferring votes would move to a full distribution of votes using fractional methods. The project has stalled and the Franchise section note that they were unsure of whether it would proceed.
- 2.27 It was noted that the integrity of the system for e-voting and the need to ensure the system is tested thoroughly is important.
- 2.28 It was noted that criteria for postal voting in Ireland is very limited with approximately only 20,000 postal votes out of 3 million voters. The criteria is similar to that which is applied to General Registered Postal Voters in New South Wales. There is no provision for any other form of postal vote. Parties are able to send out applications for postal voting but these are not returned to the parties.
- 2.29 In relation to voter identification, it was noted that ID is not required to vote in the Republic of Ireland. However, voters are randomly asked to produce ID and if it cannot be produced they are unable to vote.

## **INDEPENDENT COMMISSION ON ELECTRONIC VOTING AND COUNTING AT ELECTIONS**

- 2.30 The Independent Commission on Electronic Voting and Counting at Elections was established by the Government on 1 March 2004 to report on the secrecy and accuracy of the electronic voting and the counting system that had been purchased and whether it could be applied to the local and European elections that were held in June 2004. This followed concerns being raised by IT professionals regarding the integrity of the proposed e-voting system after they obtained information on the system under freedom of information legislation.

- 2.31 It was initially established on an ad-hoc basis but has since been placed on a statutory footing by the Electoral (Amendment) Act 2004.
- 2.32 The Commission has five members. They are:  
Chairman: The Hon. Mr. Justice Matthew P. Smith (Justice of the High Court)  
Members: Mr. Kieran Coughlan, Clerk of Dáil Éireann;  
Ms. Deirdre Lane, Clerk of Seanad Éireann;  
Dr. Danny O'Hare, Chairman of the Information Society Commission; and  
Mr. Brian Sweeney, Chairman of Siemens, former Chairman of Science Foundation Ireland.
- 2.33 Its terms of reference are:
- (1) The Commission, which shall be independent in the performance of its functions, shall prepare a number of reports for presentation to the Ceann Comhairle (the Chairman of Dáil Éireann) on the secrecy and accuracy of the chosen electronic voting and counting system i.e. the Powervote/Nedap system.
  - (2) The Commission shall make one or more of such reports to the Ceann Comhairle not later than 1 May, 2004 comprising recommendations on the secrecy and accuracy including the application or non-application as the case may be of the electronic voting and counting of the Powervote/Nedap system for the local and European elections on 11 June, 2004.
  - (3) The Commission's subsequent report or reports will record its views of the operation and experience of electronic voting and counting at elections.
  - (4) In carrying out its work, it will be open to the Commission to review the tests already undertaken to validate the electronic voting and counting system and to have further tests undertaken. It may also retain the service of such consultants or other persons that it considers are desirable.
  - (5) The Commission shall be entitled to invite and consider submissions on such basis as it thinks appropriate.
- 2.34 The Commission presented an interim report on 30 April 2004 and its terms of reference were widened to report further in relation to the secrecy and accuracy of the of the proposed system and how it compares to the secrecy and accuracy of the current system for voting at elections and referenda.

## **Notes from discussions**

- 2.35 Participants: Mr Alan Murphy, Secretary to the Commission.
- 2.36 The delegation was advised that there has been discussion about introducing electronic voting and that there have been moves towards a procurement process for a system to enable electronic voting from 1990 onwards.
- 2.37 The Government has spent in excess of €50 million on the proposed e-voting system including the purchase of machines, pilot tests and a publicity drive to sell the idea to the community.
- 2.38 Mr Murphy advised that the background to the establishment of the Commission was the fact that IT professionals had raised issues regarding the integrity of the systems chosen for e-voting. In particular mission critical problems were identified by the IT industry after information about the proposed e-voting system was gathered under

FOI. Serious concerns identified were about the software being unreliable, and poorly conceived.

- 2.39 The Commission was primarily established to look at the secrecy and accuracy of the system. Due to the short report time the Commission was not put on a statutory basis. This lack of statutory authority caused some issues, such as privilege not applying to its proceedings.
- 2.40 It was also noted that at the initial stages of its inquiry the Commission did not have access to all of the source code that was used by the e-voting system due to copyright. The one part that the Commission did have access to was the part that related to the counting of the votes.
- 2.41 The Commission released an interim report in April 2004, which concluded that it had not been satisfied as to the accuracy and secrecy of the system and was “not in a position to recommend with the requisite degree of confidence the use of the chosen system at elections in Ireland in June 2004.”
- 2.42 Following this interim report the Commission was given a statutory basis and has examined the software more formally. Intellectual property concerns continued to be raised by the IT company in relation to the source code/software and the Commission has been restricted in its investigation of the source code.
- 2.43 The Commission reported more fully on its work in relation to the accuracy and secrecy of the system in its First Report released in December 2004. This report notes that whilst overall the voting system appeared to work in relation to the vote gathering, problems were found with the software in relation to the uploading of votes and errors in the counting system. The Commission also identified a number of actual and potential security weaknesses, which included a number in relation to the computer software.
- 2.44 Some of the advantages of e-voting were outlined during the discussion. These include:
- less invalid/informal votes for people who inadvertently vote informal;
  - time taken to count ballots reduced under the e-system;
  - e-voting had opportunities to implement the Gregory method for the transfer of surplus votes that would ensure that all votes were counted rather than only a random selection.

## **TRINITY COLLEGE DUBLIN, DEPARTMENT OF POLITICAL SCIENCE**

- 2.45 The delegation met with Professor Michael Marsh and Professor Michael Gallagher from the Department of Political Science at Trinity College to discuss the single transferable vote system and electoral matters more generally.
- 2.46 Professor Marsh is the Head of the Department of Political Science and has a particular interest in electoral systems and electoral behaviour. Professor Gallagher has an interest in proportional representation electoral systems and Irish politics.
- 2.47 Both Professors have been involved with the Electronic Voting Commission in evaluating the e-voting system that has been chosen for use in Ireland.

## Notes of discussion

- 2.48 The PR-STV system has been in place in Ireland to elect members to the Lower House of Parliament (the Dail) since 1922. It is enshrined in the Constitution and there have been two attempts to change it to a first past the post system similar to the way members are elected. The first attempt occurred in 1959 and the vote was close but the voters chose to stay with the PR-STV system. The second attempt occurred in 1968 and there was a much higher percentage of voters who were opposed to changing the system.
- 2.49 It was commented that one of the criticisms of the proportional representation (PR) system is that it results in a localism of politics i.e. the idea that members spend too much time on “grass root” issues, and should have more time to work on parliamentary business such as legislation and committee work.
- 2.50 Another criticism of the PR system is that it results in minority governments always being in power and could result in instability. However, it was noted that in Ireland coalition governments have been stable.
- 2.51 It was argued that whilst PR systems are good that proportionality is not the most important aspect of democracy. It was put that accountability is just as important.
- 2.52 It was noted that there has not been much criticism in relation to the use of random sampling in Ireland. Whilst there is a small element of chance in relation to which candidate gets elected under the system, and ideally it should be removed, the matter is basically a non-issue.
- 2.53 The delegation was advised that the PR-STV system is used for elections for the Irish Senate. It was noted that in these elections, where some members are elected by university graduates and others by panels of candidates representing specified vocational interests, that a full count of the votes is done using the Gregory method.
- 2.54 The delegation was advised that the Irish Constitution specifies that at least 3 members are elected for each district but there is no maximum number. It was also noted that the majority of voters vote for candidates rather than parties.
- 2.55 In relation to the e-voting project, that is being reviewed by the Electronic Voting Commission, it was noted that some of the problems that have arisen in the implementation process stem from the fact there was no inquiry from an independent agency prior to money being expended on the e-voting machines.

## HOUSES OF THE OIREACHTAS (PARLIAMENT OF IRELAND)

### Profile

- 2.56 The delegation paid a visit on the Houses of the Oireachtas. The Parliament of Ireland is comprised of the Dáil (the lower house) and the Seanad (the upper house). There are 166 members of the Dáil representing 42 constituencies. The Seanad has 60 members with 11 members being nominated by the Prime Minister, 6 members elected by university graduates and 43 elected from panels of candidates representing specified vocational interests.

2.57 The Committee also met with members and staff of the Joint Committee on Environment and Local Government. The Committee considers bills that come within the Department of the Environment and Local Government, the Department responsible for administering elections. It also considers Estimates for public services of the Department and is able to consider any matters pertaining to the Department or the Government's policy on matters under the Department's control.

### **Notes of discussion**

2.58 Participants: Mr Seán Haughey TD, Chairman, Joint Committee on Environment and Local Government; Mr John Cregan TD, Member of the Committee; and Mr Séamus Burke, Clerk to the Committee.

2.59 It was argued that the Irish people are happy with the PR system and this is indicated by the fact that two referendums have opposed the system being changed.

2.60 Mr Haughey commented on the electronic voting proposal noting that e-voting has been supported by the people but because the system that has been chosen was found by the Electronic voting commission to be open to fraud the introduction of e-voting has been postponed.

2.61 In relation to the counting of ballot papers, it was noted that the ballot papers are counted in a central place in each district and that the votes are counted the next day rather than the same night.

2.62 A number of comments were made about the way that members are elected to the Irish Senate. In particular it was noted that the 11 appointments made by the Government to the House are to ensure a governing majority in the Senate.

2.63 The delegation was advised that a recent review of the electoral boundaries increased the number of 3 seat constituencies. It was pointed out that these constituencies are harder for minor parties to win a seat than it is in the 4 or 5 seat constituencies.

2.64 It was noted that the Fianna Fáil Party has been the party that has held the largest number of seats in the Parliament in recent years. Since 1989 the party has been able to form coalition governments with a variety of parties.

2.65 The delegation was informed that there is a five year maximum term for a Parliament and that the next election for the Dáil is to be held in 2007. It was noted that local issues and personalities dominate elections rather than the parties.



## Chapter Three - New York

### **BACKGROUND**

- 3.1 The delegation visited New York to meet with officials from the Electoral Assistance Division of the United Nations and academics at Columbia University to discuss broader issues of election systems and in particular to benchmark practices in relation to the administration of elections in New South Wales.

### **ELECTORAL ASSISTANCE DIVISION, UNITED NATIONS**

- 3.2 The Electoral Assistance Division provides technical oversight and assistance for reforms of electoral laws. Under the United Nations (UN) charter they can only intervene on a request of member states as it is considered to be a domestic issue. The exception is if a Security Council or General Assembly resolution has been passed.
- 3.3 The Division is currently involved in 48 operations worldwide and had 16 requests for further actions. Some of the operations included, Iraq, East Timor, Bougainville, Papua New Guinea, Indonesia in relation to its Presidential elections, Jamaica and Afghanistan.
- 3.4 The Division was set up to try to foster, 'credible, genuine, periodic elections'. An amendment proposed by Cuba was agreed to that the Division also work 'with respect for sovereignty'.

### **Notes of discussion**

- 3.5 Participants: Mr Sean Dunne, Chief of Operations and Mr Scott Smith, Political/Electoral Affairs Officer.
- 3.6 It was argued that sovereignty issues are important for electoral matters. With this in mind the UN aims to ensure that nation states are heavily involved in any decisions made on electoral issues, as self-determination is considered important for stability. In addition it was noted that it is just as important for consensus to be reached towards the ideas and intervention of the UN.
- 3.7 Electoral issues are complex for the UN to deal with in the context of sovereignty. It was noted that the International Monetary Fund and the World Bank make democracy a conditionality to funds for nations. However, the United Nations note that some nations have no history of democracy and are of the view that stability is just as important as democracy.
- 3.8 It was also argued that the climate in countries and regional actors, particularly if there is dissidence, are also vital to securing stability. In addition, it was noted that the political involvement of countries such as the USA is also a factor in ensuring stability.
- 3.9 A number of comments were made in relation to electronic voting. It was noted that Brazil has implemented a system of full e-voting and that India have an e-voting system, which is administered by the Army.
- 3.10 However, it was noted that some countries had experienced difficulties with e-voting. For instance, New Zealand have an online electoral registration system that has had

some problems with its implementation and the US Federal Electoral Commission has experienced problems with e-voting.

- 3.11 It was commented that one of the difficulties with e-voting is that people underestimate the costs with the capital (i.e. the machines) being only 25% of the overall costs.
- 3.12 In addition, it was commented that there have been few studies of society's reaction to e-voting but that one of the issues that is always raised relates to maintaining an anonymous secret ballot.
- 3.13 A number of comments were also made about postal voting and electoral fraud. It was noted that the United Kingdom had experienced issues in relation to postal voting fraud. Political parties have been accused of postal fraud through postal voting arrangements and it has been suggested that parties should not be involved in the postal voting process. The United Nations are of the view that perceptions are important because if people perceive that the involvement of political parties in the postal voting system is open to abuse then it is bad for the whole electoral system.
- 3.14 The United Nations argued that one of the general principles that independent electoral commissions should use to guide them is that elections are not a contest of equals and that the role of the electoral commission is to ensure the playing field is equal.
- 3.15 It was commented that electoral systems evolve over time and must adapt as society changes. It was also noted that it is important in democracies that Governments cannot change the electoral laws to favour themselves. However, it was noted the electoral system must work within the political party system and that elections, in theory, have predictable outcomes.
- 3.16 The United Nations also commented on a number of issues that were raised in the Committee's inquiry into the administration of the 2003 election and related matters.
- 3.17 In relation to the issue of whether the State Electoral Office (SEO) should consult with political parties on a regular basis the United Nations noted that consultation with all stakeholders is important for developing systems for elections.
- 3.18 On the issue of the lack of information provided to scrutineers the United Nations questioned whether the onus should be on the SEO or political parties to provide guidelines. It was commented that the SEO could set requirements that political parties must provide their scrutineers with certain training/guidelines.
- 3.19 With regards to the designation of polling places it was noted that it is important where the places chosen for polling places are located and that geography plays an important role. The United Nations commented that it might be useful for the SEO to get assistance from the Australian Electoral Commission (AEC) to draw up the polling places and that this would ensure that polling places are consistent across state and federal elections.
- 3.20 In relation to the issue of some organisations turning the SEO away from using facilities for polling places due to public liability concerns the United Nations argued there should be a limitation of insurance for polling places as elections are vital for the public interest.

- 3.21 The UN commented on the issue of how-to-vote cards registration, noting that it might be useful to have the District Returning Officer (DRO) as the first point for the registration of material, rather than the Electoral Commissioner, and then if there is a need for an appeal the Electoral Commissioner will have the power to override to DRO's decision.
- 3.22 In relation to the issue of third-party candidate endorsement it was noted that this was a political decision. However, the UN argued current processes that prohibit third-parties, such as lobby groups, from endorsing candidates favours large parties.
- 3.23 In relation to having a statutory requirement for the SEO to report on the administration of elections the UN noted that in some countries the Parliament does not have the power to direct electoral authorities. Rather Parliaments would seek advice from the electoral authority on what to do.
- 3.24 On the issue of resources the UN noted that Elections Canada, the equivalent of the SEO in Canada, have the signing authority of the Treasurer during the election process in order to utilise whatever resources it needs. Elections Canada then reports to Parliament on its expenditure. It was also noted that the starvation of resources to an electoral commission is a political issue.
- 3.25 Comments were also made about electoral education. The UN questioned whether the onus should be on the State or the political parties. It was argued that ideally both non-partisan and partisan education has a role and that the question really is should the State fund political parties. The UN is of the view that education on the electoral system of a non-partisan type should be the main focus of state funding.
- 3.26 In relation to the difficulties that were raised in the Committee's inquiry in relation to overseas voting the UN noted that the process has complicated arrangements in that the responsibility is in many respects transferred to federal agencies. In regards to the comments made by the Electoral Commissioner that e-voting could be a way for people who are located to overseas to vote the United Nations argue that currently there are no security guarantees for e-voting processes and that systems are open to fraud. Therefore the UN does not advocate it.
- 3.27 It was also commented that if confidence is important a manual system is better. E-voting heightens distrust. In addition, it was argued that the cost of the system makes it unviable at this point in time. The UN also noted that there is the issue of digital evidence should an appeal arise particularly in relation to who is qualified to judge electronic evidence. It was noted that a call centre for voting might be a better option. It was suggested that a call centre would be useful for general information during an election and that phone voting could be an option for regional voters as it is more secure than e-voting.
- 3.28 On the issue of the political neutrality of staff of the SEO it was noted that contractual clauses prevent bias and any lack of neutrality in addition to code of conduct. In addition, the UN noted that regular consultation with political parties will minimise allegations of perceived bias.
- 3.29 In relation to the need to report the results of elections by booth, the UN noted that this was fine in solid democracies but commented that the UN do not allow such results in fractured societies as it could lead victimisation or worse.

- 3.30 In relation to ensuring that people with disabilities are not disenfranchised to their disability it was commented that one mechanism to help to ensure people with disabilities vote is by having mobile voting teams.
- 3.31 Comments were also made in relation for the need for improved and increased training for staff of the SEO. The UN noted that ideally there should be a dedicated training unit within the electoral authority both within election times and between elections. It was also noted that the AEC and the UN have developed a course on election administration known as BRIDGE (Building Resources in Democracy, Governance and Elections).
- 3.32 In relation to the issue of the involvement of political parties in the postal voting process that was raised as part of the Committee's inquiry, it was commented that the issues raised in the United Kingdom with fraud raised many similar concerns in relation to the political parties involvement. The UN noted that if the main reason that political parties are involved is in order to compile a list of people to send out campaign material that it might be useful for the State agency to send out ballot papers, which include electoral material from all parties that has been registered. This would be considered fair and is a good equal playing field measure.
- 3.33 Comments were also made in relation to voter identification. It was noted that Mexico has a solid voter registration system that has a big budget. Voter ID cards produced under this system is used as a quasi-National ID card and has become an important proof of identity in Mexico.

## **COLUMBIA UNIVERSITY, DEPARTMENT OF POLITICAL SCIENCE**

- 3.34 The delegation met with Professor Robert Erikson and Associate Professor Robert Lieberman from the Department of Political Science and discussed electoral issues generally.
- 3.35 Professor Erikson's research interests include the study of electoral politics, public opinion, and policy representation in the United States. Professor Lieberman's current research interests are in American political development, race and politics, and social welfare policy and the welfare state.

### **Notes from discussion**

- 3.36 There was a general discussion on proportional representation (PR) voting systems. It was noted that the instability of such systems is overstated and that more emphasis should be placed on the lack of accountability that PR systems often have.
- 3.37 There was also general discussion on the political environment and identities in both Australian and USA politics. In addition discussion ensued on political trends and new political parties that have emerged in recent years in both countries and throughout the world.
- 3.38 A number of comments were made on the electoral system in the USA. It was noted that the USA only have below the line voting. It was also noted that there is no central political control over elected representatives by the parties and that people cross the floor regularly.
- 3.39 It was also noted that approximately 50 – 60% of eligible voters vote in the USA for Presidential elections and that the energy of the parties is directed at marginal seats.

For instance, it was pointed out that voters in New York City predominantly vote Democrat and this has meant little campaigning is done in the area. It was also noted that campaigning only in marginal seats has an effect on voter turnout.

## Appendix – Itinerary

### **Wednesday 29 June 2005**

PM The delegation departs Sydney

### **Thursday 30 June 2005**

PM The delegation arrives in Malta

### **Friday 1 July 2005**

PM Call on the Parliament of Malta  
Tour of the building  
Meeting with Members of Parliament and Party Officials

PM Meeting at the Electoral Commission and Electoral Office

PM Meeting with the Labour Party of Malta

### **Monday 4 July 2005**

AM Meeting with the Leader of the Opposition

PM The delegation departs Malta

PM The delegation arrives in Dublin

### **Tuesday 5 July 2005**

AM Meeting with the Franchise Section, Department of the Environment, Heritage and Local Government

PM Meeting at the Commission on Electronic Voting

PM Meeting at the Department of Political Science, Trinity College Dublin

### **Wednesday 6 July 2005**

AM Call on the Houses of the Oireachtas  
Tour of the building  
Meeting with the Joint Committee on Environment and Local Government

PM The delegation departs Dublin

PM The delegation arrives in New York

**Thursday 7 July 2005**

AM Meeting with the Electoral Assistance Division of the United Nations

PM Meeting at the Department of Political Science, Columbia University

**Friday 8 July 2005**

AM The delegation departs New York

**Saturday 10 July 2005**

PM The delegation arrives in Sydney