

REPORT OF PROCEEDINGS BEFORE

**JOINT STANDING COMMITTEE ON ELECTORAL
MATTERS**

**INQUIRY INTO ADMINISTRATION OF THE 2007 NEW SOUTH
WALES ELECTION AND RELATED MATTERS**

At Sydney on Tuesday 11 March 2008

The Committee met at 9.45 a.m.

PRESENT

Ms Cherie Burton (Chair)

Legislative Assembly

Mr Robert Coombs

Legislative Council

The Hon. A. R. Fazio
The Hon. J. A. Gardiner
The Hon. D. T. Harwin
Ms L. Rhiannon

CHAIR: The Committee is holding this hearing as part of its inquiry into the administration of the 2007 New South Wales election, which has been referred to it by both Houses of Parliament. The resolution of both Houses under which the Committee is appointed provides that the Committee is to inquire into the State election held on 24 March 2007 in respect of any matters relating to the Parliamentary Electorates and Elections Act 1912 other than part 2, the Election Funding Act 1981, the provisions of the Constitution Act 1902 concerning the provisions for and conduct of elections for members of the Legislative Assembly and the Legislative Council, excluding the sections dealing with the distribution of electorates, the administration of these electoral laws and associated practices.

I thank all the individuals and organisations that have made submissions to this inquiry and those witnesses appearing today to give evidence to the Committee. By way of clarification, certain submissions to this inquiry have raised matters concerning election funding, and I point out that a select committee of the New South Wales Legislative Council is currently conducting an inquiry into electoral and political party funding. The Committee has drawn this to the attention of some of the submission makers.

ANTONY JOHN GREEN, Private citizen, affirmed and examined:

CHAIR: For the Hansard record, please state your full name and professional address for correspondence from the Committee.

Mr GREEN: Antony Green. I work as an election analyst with the Australian Broadcasting Corporation [ABC] at 700 Harris Street, Ultimo, although I would point out that I am appearing in a personal capacity, not representing the ABC.

CHAIR: Would you like to make an opening statement?

Mr GREEN: I will briefly make an opening statement, one on a side issue first of all. While I said I was not representing the ABC, there is one recommendation in the Electoral Commission's report that there not be a tally room at the next election. If you want, I can ask the ABC to give you something written on that but the view of the ABC is that if the commission chooses not to have a tally room at the next election the ABC does not have a problem with that. We will have an election in every State, Federal and Territory in the country before we get to New South Wales. Given the lack of attendance at the last tally room and the fact that so much of the data is now available in computer readable format, we would do a coverage from a studio. We do not have a problem if the New South Wales Government abandons the tally room for New South Wales. It is a discussion we are having with a few of the electoral offices around the country at the moment.

Secondly, I have discussed the registered material. I will discuss this in a submission. There are a number of problems raised in a number of the submissions about totals on the web site of the Electoral Commission. There were not statewide totals and things like that. There were a number of problems with the way the data was fed to the media and to other interested parties and the way that the data has been provided. Some of those are the cause of why there were not totals on the web site and why there were some slight inaccuracies in results. I can discuss those if you like but they are more the sorts of things that we would discuss with the Electoral Commissioner in the run-up to the next election.

It is usually easier for the media to have a direct discussion with the Electoral Commissioner rather than do it through a joint standing committee. About 10 years ago we got into terrible rows with the Federal Australian Electoral Commission on the provision of votes and ended up with a joint standing committee negotiating between the media and the Electoral Commissioner because we got into such a state. I do not think it is usually very useful to work through a committee; it is often better to do things directly. Apart from that, I am happy to discuss my submission.

The Hon. AMANDA FAZIO: You talked about registered material being available on election day only at the returning officer's district office.

Mr GREEN: Yes.

The Hon. AMANDA FAZIO: Can you elaborate on why you think it would be more useful if it was made available at each polling booth?

Mr GREEN: The point I am making is that there is a process gone through to approve this material, to ensure that it meets all the requirements of the Electoral Act and the commissioner gives his endorsement—I have forgotten the word but it says that this meets the requirements of the Act and then the material is not available until election day. The Act as specified says that it is available only in the office of the electoral returning officer and only to people on the roll in that district or registered scrutineers. So the access is very limited. In terms of access for people wanting to check whether how-to-vote material is valid for distribution, people working in a polling place trying to figure out whether their opposing party is issuing something that is lawfully registered, you cannot know that because the Act does not actually give anybody working outside a polling place access to the material in the polling place. If you are a Labor Party handing out a how-to-vote and the Liberal Party handing out something and you are not sure whether it is registered or not, you cannot know because the material is not available.

The Hon. AMANDA FAZIO: You were saying that you wanted it available not just on election day. Was it your submission that said you wanted it available before election day, between the period between the cut-off for registration of material to be handed out and polling day?

Mr GREEN: I have pointed out that the Victorian Act states simply "as soon as practicable after registering a how-to-vote card under section 79 or 80 the commission must make available a copy of that card for inspection at the office of the commission". In Queensland they go further and say that it is available for inspection at the polling place. The point is that it is available beforehand. That means that anybody who wants to see what is recommended as a how-to-vote can see it beforehand. Most of this material must be accumulated at least a week before because it has to be put into electorates and distributed. It is collected centrally, because that is where it is all registered. It has to be distributed to returning officers and then the returning officers must distribute it to the polling place officials. So the material has to be all organised into electorate bundles days before the election. So it is there; it is filed away to look at.

If I do a Victorian or Queensland election you can go to the Electoral Commission; they have folders for all the parties and all the districts and all the material is there for you to look at if you want. I have brought along this booklet, which is registered how-to-vote cards for the South Australian Electoral Commission. In South Australia you are able to register how-to-vote material and on polling day they will display this. This material, which is mini how-to-vote cards, is actually pinned on the polling booths when you go to vote. When you are at the polling place in your little partition on the wall in front of you are all these how-to-vote cards for the candidates. Outside they can still hand out the traditional how-to-vote cards, which are covered and A4 size but these are little ones for people who want some assistance on what to do with their preferences and they did not receive one for a candidate outside.

Other States do the same thing of registering material but the material is then available to examine. The Committee made recommendations that it be available on the day and the Government, in passing the Act, further restricted who should have access. I see no reason why that material, once registered, should not have public access.

The Hon. AMANDA FAZIO: In South Australia how do they determine the layout of it? Is it alphabetical? Do you know?

Mr GREEN: To be honest, I am not sure whether there is a ballot to determine whether it is left to right or whether it is done in ballot paper order. From the look of this, it is not done in ballot paper order so I presume there is some sort of format which determines who gets first appearing or not. But that is done as assistance to voters. The registration material is done to ensure that voters are not misled in some way, and therefore I see no reason why the material should be kept as secret as it is.

The Hon. AMANDA FAZIO: In Victoria how long before polling day is that material made available?

Mr GREEN: The Acts in both Queensland and Victoria do not specify when the material must be available. It is not stated it must be there within three days or something; it simply says "as soon as practicable". The Queensland Act further goes on to say that if for some administrative reason the material is not available it cannot be used as grounds to challenge the results. So the Act is written relatively broadly to say that this material must be made available but the Electoral Commissioner is given reasonable administrative grounds to determine when it is practical to make it available.

The Hon. AMANDA FAZIO: In your personal experience when is it made available?

Mr GREEN: The material must usually be registered—I mean, New South Wales is eight days out, and I think it is roughly similar in other States. I think it may be slightly longer because of the timing of the writs. The other States generally have slightly longer between the close of nominations and polling day. I usually look at it the last week of the campaign, go in Wednesday before the election and look at the material without any difficulty.

The Hon. JENNIFER GARDINER: On the subject of registration, do you have any indication of why the Government chose not to go down the joint select committee's recommendation and actually made it so secret to most people?

Mr GREEN: I do not know. They said they were following the recommendation and then made it very tight. My assumption was always that they thought they had a very good designed how-to-vote card and they did not want anyone to look at it. That is just my personal opinion; I do not have any belief or knowledge of why the Government chose to make it so restrictive.

The Hon. DON HARWIN: What would be your preferred outcome in terms of registration of material?

Mr GREEN: There are many provisions in the Act to do with what is allowed to be registered and what is not allowed to be registered. That is much more specific.

The Hon. DON HARWIN: On the specific timing issue which you have raised in your submission?

Mr GREEN: I think the Victorian provision is very good. It is open; it does not specify it must be there by a particular date. It simply says "as soon as practicable". I would also consider the Queensland provision that this material is in each polling place; the returning officer has the material. If someone wanted to look at it, it should be available to be examined.

The Hon. DON HARWIN: So one file copy with the returning officer at each polling place.

Mr GREEN: They must have a copy anyway because they are supposed to police what is going on outside.

The Hon. DON HARWIN: They have one that is available to members of the public to look at.

Mr GREEN: If they particularly want it. Not many voters come in and ask for that but certainly someone who is handing out how-to-vote material outside and wanted to question what someone handed might want to look at the material.

The Hon. DON HARWIN: So do you think it would be desirable to go down the South Australian model and mandate it in a public sort of display?

Mr GREEN: I think it is a good idea to go down the South Australian route. The groups that are assisted by those above all are the minor parties, rather than the major parties. Most major parties would staff most booths. But if you look at the material from South Australia, South Australia has some peculiar provisions in its Electoral Act about redistributions which require detailed two-party preferred counts in every booth to be done. They have quite detailed accounts of how preferences flow in South Australia. If you look at that, there seems to be some evidence that these how-to-votes have some impact on people following how-to-vote cards. If you look at a candidate in New South Wales who has not handed out how-to-vote cards, their preferences will just go all over the place.

In South Australia if you look at Family First, if Family First have directed preferences to Labor in a seat in South Australia, you will find that there is a fair drift of preferences following that how-to-vote card, presumably because this material is available. As I said, it is more of an issue for the minor parties. It certainly does mean that voters have material on how to fill in preferences. It is probably less important in New South Wales because it is optional preferential voting. The point in South Australia is that it is compulsory preferential voting. You want to ensure that if people are going to vote in those sorts of situations, one of the reasons you hand out how-to-vote cards is to ensure that people cast a formal vote as well as trying to influence their preferences.

The Hon. DON HARWIN: So you are also advocating that that sort of compilation booklet be available from a central location?

Mr GREEN: This compilation booklet is actually provided to the media. Each of these pages are displayed on your voting screen in the polling places when you go to vote.

The Hon. DON HARWIN: So it is something that voluntarily the South Australian election authorities do rather than something that is required under the Act?

Mr GREEN: This came about because South Australia has got a peculiar provision to save informal votes. If a voter in South Australia casts only one it is an informal vote because it has not got preferences. But they have a savings provision so that if someone votes number one it is deemed to have the preferences of the lodged ticket, which may or may not be this ticket. That is why in South Australia their informal vote is only half the Federal informal vote rate because they are able to save all those people who have just voted number one by implying preferences.

It is something I have advocated to the Federal electoral office and to the Federal joint standing committee. I would recommend this. It is a big administrative load to impose and it also means that people who cannot get their act together enough to organise a how-to-vote card and distribute a how-to-vote card get a big step up because of this. To that extent, why should the electoral office be doing something which candidates themselves cannot do? So there are things in favour and against this sort of approach of putting up how-to-vote material in polling places.

If it is at least made available in polling places you do not have to go to the expense of sticking it on every polling screen. But, as I said, there are reasons why it should be available in polling places anyway and it should not be quite as restrictive as it was written into the Act and I see no reason why it should not be made available before polling day. Other electoral commissioners manage to do it and I do not see why New South Wales should not be able to.

Ms LEE RHIANNON: And it has upper House and lower House in it?

Mr GREEN: This does have the upper House material it recommends how to vote. I am not sure if that is put on every screen, because there were 30 or 40 groups in the last South Australian election and you just cannot put them on the voting screen.

Ms LEE RHIANNON: That is why I wondered in terms of size how you manage it.

Mr GREEN: That is one of the problems, and if you get 15 candidates it gets rather complex. Again, with the upper House in New South Wales, because we have gone so people can fill in their own preferences, there is no requirement for those old preference books to be made available. But, again, if material is registered from an electorate there is no reason why it should not be available if somebody asks. Again, it is not available at the moment because the Acts have been written in such a way that it is not available. You can free up all this material just simply by not making it so restrictive.

The Hon. DON HARWIN: Do you have another copy of that document there?

Mr GREEN: This is the only copy I have, unfortunately. But you can get a copy.

The Hon. DON HARWIN: We should probably have a tabled copy, given that we are referring to it a lot.

Mr GREEN: I suggest you get one from the South Australian Electoral Commission. This is my only copy.

The Hon. DON HARWIN: I have some questions about the two-party preferred voting issue. I know that in South Australia because of their redistribution provisions they have the need for a particular specificity in their counts as it relates to the preferential count. But would you say there was some sort of benefit from mandating a similar approach to what is actually required in the legislation? I know in the past when we have asked questions of the Electoral Commission at this Committee about preferential counts, we have had the response that, "I am not required to do that under the Act". Do you think we need to do something more formal?

Mr GREEN: My view on that is partly political scientist. Malcolm Mackerras is very keen on getting a statewide two-party preferred all the time. I am not always as keen on it because I am not sure it is always very useful. The Queensland Electoral Commission used to do it and then they abandoned it in 1998 when a third of the electorates in the State ended up as being not two-party contested. It was Labor versus One Nation or National versus One Nation and the electoral commission abandoned two-party preferred because there was no sensible figure coming out of that. The only result that matters is who elects each seat. I should clarify: Are you talking about two candidates preferred by booth or—

The Hon. DON HARWIN: I am talking about all the information that psephologists like to look at, which is two-party preferred, two candidate preferred and all of the information that ends up in your very fine publications, thanks to all your diligence, but is not necessarily required under the Act, and if you were not doing it we might not have it and we would be sorry.

Mr GREEN: The commissioners have done a two-party preferred by electorate in all those other electorates. I would point out there were 21 instances which were not two-party contests at the last New South Wales election. And, unlike the Federal electoral office who can do all those vast countings because they have permanent staff in returning offices, once the election is over and the official count is done, the returning office is closed down because they cannot do a two-party preferred count until the election has settled down or the paperwork comes back. They did do one—it took two to three months; but that is the same as occurs in other States. It takes two to three months for the Victorians to get around to finalising their two-party preferreds. So I have not got a problem with the commission doing it.

The Act says they should do a full distribution for information purposes. I think you can ask for them to do two-party preferred, but I am always very cautious going down the South Australian route of putting two-party preferred counts in some sort of administrative arrangement for redistributions, which has been a bit of a nightmare down there. There was an Independent Bob Sutch who won the seat of Fisher two elections ago and was one of those who helped put the Rann Government into power and it was a hung parliament. He had to appear before the redistribution commission while the commission had to make up its mind whether to treat him as a Labor or a non-Labor candidate in doing a distribution of preference.

So I would hate to go down the route of that, which is the South Australian route. The commissioner is doing the counts and I would encourage him to continue to do it. If you put something in the Act he is going to say this has some cost and will take time. But you could put a provision in there about the information purposes two candidate preferred counts and put a provision there something like "and other counts" to determine a statewide vote after preferences—something as general as that rather than get too specific. I think that would be worthwhile.

As far as two candidate preferred counts and booth counts, as you are aware I put some information in there about one booth—Lake Macquarie. In my publication for the Parliament on the final analysis of the election results, I went through in detail two candidate preferred counts in every booth and the exact preference flows that were done. Since I started doing elections, the first New South Wales election I did in 1991 was in tally slips and little bits of papers and booth numbers hand-scrawled across the top. Now data is delivered to us in XML data file formats. Nowadays, where eight or nine years ago when we did our first election night election site it was just on the night, now everybody wants us to keep running after the election.

The last New South Wales election was the first one where the ABC continued to run its website for two weeks after the election. To some extent what we were providing was more useful than the Electoral Commission because there were a number of things they had not thought through on their site, like statewide totals, which they were not providing. But there were some problems with the feed that came through because while they had on election night done exact preference flows in every booth and while they continued to do that in the post election period on postals and absents, the problem was in the close seats they did not go back and do a check count on preferences.

The example I have used in my submission is Lake Macquarie, that while they continued to provide this two candidate preferred count after the election night and we continue to use that, we knew it was not right because the booth counts had not been checked. They had done a check count of

the formal votes and I have provided those totals here, but they then did not check the two candidate preferred. There is a significant cost in asking the electorate staff to go through every booth and do an exact preference count again, and in some seats like Newcastle where you are not exactly sure who the final two candidates are, you still may not get it right. But in the close contests, and the obvious ones were Lake Macquarie, Port Stephens, Miranda, the counts that were being delivered to us we knew potentially had minor errors and therefore, until they did the final distribution preferences at the very end those errors did not become apparent.

My suggestion would be, and I have made the suggestion in the submission and I have suggested it to the commissioner, in close contests they should do a check count of the preferences in those close booths, and from discussions with him he agrees with me that that is something they probably should have done, and in other States they do do that. But that would mean that the feed we got after the election would have been as accurate as possible. These are things you do not realise until in hindsight: you are doing something for the first time but the quality of the data is not actually quite as good as you want.

Mr ROBERT COOMBS: I have a question of curiosity. When you identify some of the differences that exist in the different accounting systems in the lower House State by State are there many of those sorts of differences in the upper House when you compare our quota systems and things like that?

Mr GREEN: I am not sure of the question. The Greens raised in their submission a point that the counts of the Legislative Council were wildly inaccurate on the night and that everybody who voted below the line and every informal vote was lumped in as a single total in what was provided to us, which meant we got some very strange-looking figures. Again, with the commission I would recommend they adopt some other method of providing those totals on the night. But there is always a lot of concern by electoral commissioners that having asked staff in the polling booths to do a full count of the primary votes of the lower House and then a full count of the preferences for the lower House and then indulge in a count for the upper House, that these are large papers and to ask the staff doing informality checks is a bit difficult; they cannot possibly know.

I do think they could do a better count for the upper House in New South Wales. There are other procedures to look at in other States, but it is a time-consuming and difficult task and most people who are working on the polling booths have no idea of the formality procedures so trying to ask them to judge what is formal and what is not, does not work. But I do think there are better ways to provide totals of results on the night for the upper House, and I think this will come up again at the local government election where, hopefully, they would adopt better procedures than the last local government election where again a similar procedure was adopted where they did not ask the staff to try and make any determination whether below the line votes were formal or not and therefore the totals that were sometimes released at the end of the count were not actually a very reliable estimate of what was going to be the final result.

The Hon. DON HARWIN: Just one last question. You again raised, as you did when we had a similar inquiry after the 2003 election, the issue of the length of the campaign as such and the date on which the writs are issued. Is there anything, in addition to what is in your submission and what you said last time, that arises out of the 2007 that you would like to specifically draw to our attention as to why this provision is anachronistic and needs reform?

Mr GREEN: Again, as I said last time, there is a fixed date for the election and there is a fixed date for the dissolution, but because the provision of the Parliamentary Electorates and Elections Act was not amended when the fixed term parliaments were brought in, there was still up to four days allowed for the issue of the writs, which means that the Electoral Commissioner can know the date of the dissolution and the date of the election but he does not know on what date he can issue the call for nominations. The problem that is occurring here is that the political parties are sending out more and more applications for postal votes and there is nothing the commissioner can do with those postal vote applications until the writ is issued. So the parties are getting application forms which they cannot do anything with because the election has not started and the commissioner does not know what date the election is started because he does not know until the writ is issued.

I think there is no reason given how short the campaign is. Why that extra couple of days should be put in there is a variable. If the writ was issued the same day as the parliament was dissolved, which occurs, if you go back through history you will find that what used to happen was that the date of the election used to be announced in parliament and several days, weeks, later the parliament would be dissolved and the writ would be issued at that point. I do not know what is in the New South Wales Parliamentary Handbook but if you go through the Commonwealth Parliamentary Handbook you will find there is a table there of the date that the election was announced in Parliament and then the date the writs were issued, and that period between the dissolution and the issuing of the announcement and the actual dissolution and the issue of the writs is for people to get their enrolments sorted out.

That became a problem in 1983 when Malcolm Fraser called a double dissolution on a particular day and on the same day the Parliament issued the writ and lots of people were caught out. So, there has been an argument ever since about how long after the issue of the election people should fix up their enrolment. The Tasmanian Parliament is the only one that specifies the writ should not be issued on the day that the Parliament is dissolved. It specifies the writ is issued five days after the dissolution and that allows people to sort out their enrolment. With fixed term parliaments all of the other States which have got fixed term parliaments have moved to the date of the dissolution is done with the day that the writ is issued. Given New South Wales has such an extremely short campaign—it is the shortest in the country—I do not see why the writ should not be issued the same day as the dissolution as occurs under many other parliaments.

Ms LEE RHIANNON: The Committee has submissions that advocate proportional representation. As you move around the country so enormously looking at electoral systems what do you think is the fairest?

Mr GREEN: One of the problems in Australia is that most talk of proportional representation ends up being about a Hare-Clark system. The Hare-Clark system works magnificently in Tasmania where it has been used for 100 years where it has had the same five electorates for 100 years, and those five electorates roughly encompass the same area. It is part of their system. It has got a long history. The Australian Capital Territory also uses the Hare-Clark system but it does not work as well because people are not really as interested in local politics there as they appear to be in Tasmania. A lot of people just vote straight down the party ticket rather than spend a lot of attention over who the candidates are.

The problem if you introduce proportional representation in New South Wales—and it was used in the 1920s and then abandoned after three elections—and the Greens submission recommended seats of nine members, if we keep the same size Parliament those electorates would be bigger than the entire state of Tasmania. So you are talking about an election in huge electorates where people are not going to know who the candidates are necessarily so most people are just going to vote straight for the party. So many of the things that are proposed like rotating ballot papers and stuff would just be a process randomising vote amongst candidates, except for the 5 per cent who know who the candidates are. I am not an advocate of using that sort of system in such large electorates. It works really well for small electorates. It seems to work relatively well in local government but you only have a quota of 10,000 but when you have a quota of 40,000 or 50,000 it becomes much harder for candidates to be known if you had nine electorates which would virtually cover everything west of the Great Dividing Range in one electorate.

If you go back to the 1920s the electorate of Sturt as it was then covered half the area west of the Great Dividing Range and it was very difficult to service. That is the problem. I have been reading through some British papers on this subject when there was a big debate about what to do with the House of Commons. Its problem has been "What do we do with the upper House?" because it still has not resolved what to do with the House of Lords and how it should be elected. In Australia the solution to this problem has been a lower House which is elected by single-member electorates and an upper House with proportional representation, and that seems to be an Australian compromise. We have inherited an upper House and we have modified its electoral system to suit the purposes of a modern parliament.

I think I would rather continue with that system than adopt proportional representation. Tasmania has proportional representation in the lower House and single-member electorates in the

upper House. It seems to be a reasonable compromise. I understand that many of the people who advocate the Hare-Clark electoral system are also terribly anti-party people. They do not like parties and they do not like parties putting up candidates and they put up proposals to get around how to actually break party control under pre-selection, and that is often what they are really talking about rather than proportional representation. I think if people are really keen on trying to break and broaden the pre-selection basis of political parties, the better way to approach it is actually doing statewide reform of the structure of political parties and pre-selection processes. I think that is a better approach than trying to sort of fashion a way of allowing voters choice of nomination into an electoral system which really only works for a small electorates, not for large electorates.

CHAIR: Do you want your submission included as part of your sworn evidence?

Mr GREEN: Yes.

(The witness withdrew)

MARTIN JOHN LAVERTY, Interim State Director, Liberal Party, New South Wales Division, Level 9, 140 William Street, East Sydney, sworn and examined:

CHAIR: The Committee has received your submission. Do you want to make additional comments to that submission?

Mr LAVERTY: Thank you for the opportunity to appear before this Committee today. It is very important that as a major party participant in the New South Wales election that the Liberal Party has the opportunity to appear before this particular inquiry, in part to pay the respect that it deserves. It is important that all political parties provide their views on the election to this inquiry. I am somewhat disappointed that if I believe today's press reports that an opportunity was also extended to my equivalent at the Australian Labor Party to appear and make their observations—

CHAIR: I will interrupt your opening statement. The Labor Party has made its views quite clear about the conduct of the previous election. I think it would be appropriate if you just talk to your submission that we are here for, and not to politicise it.

Mr LAVERTY: I am happy to do so and to take scrutiny of our submission because that is an important component of making those submissions. The key themes made by us in our submission to this inquiry are a result of a request that we put to the members of the Liberal Party in New South Wales. We advised our members that we would be making the submission and some of the components that appear in our submission to this inquiry are as a result of feedback, so people who participated as volunteers in representing the Liberal Party at that election.

The first issue was a matter that was touched on by Mr Green, which relates to the timing of the issue of the writs for the election. In New South Wales we are all aware that we would have worked to a four-year cycle for elections and that at present I understand the writs are issued about three weeks before the election period which, on our understanding, is the shortest period for the issue of writs of any State or Territory government in Australia. This obviously has an impact on the process for the calling of nominations and it also has other impacts on the operation of the political cycle in the lead-up to the election. The Liberal Party has recommended to this inquiry that an extension of the period in which the writs are issued be considered, and that it would perhaps be appropriate if the writs be issued on the same day that the Parliament is dissolved, to bring certainty to both the officials conducting the election and also candidates who are seeking to stand for election at the State elections.

We think that within that process that it would also be appropriate that the locations of polling booths be finalised a little earlier than they were at the 2007 election. The establishment of polling booths in some cases was not actually known until the period where the election writs were issued. We think that a period of perhaps two months prior to an election date would be a reasonable time for the commission to identify each of the polling places, given again that we know when the election date is, there is a period of time to allow for this work to be conducted so that all candidates and parties can be advised well in advance of where those polling booths are likely to be.

We also think that on election day itself, and indeed in the lead-up to election day, that there continues to be a degree of confusion primarily for the volunteers who work on behalf of parties and candidates in handing out how-to-vote material at polling booth about what and where it can be displayed. Our experience at the 2007 State election was that there was not a uniform approach as to how the Act was applied across the State as to where campaign material on behalf of parties can be located, and that within electorates there were various discrepancies as to how those rules are applied. Our suggestion is that they be simplified. We are not suggesting any major dramatic changes to the principles but rather the implementation of them be made simpler for participants in the process.

We also have had some instances drawn to our attention by members who were volunteers on behalf of the Liberal Party at polling booths on election day of the potential multiple voting occurring in particular parts of New South Wales. I am going to table two statements from individuals who were volunteers, and in one case a candidate, on behalf of the Liberal Party in the State seat of Wollondilly. The first statement on behalf of one of the members of the Liberal Party indicates that he received a notice from the commission suggesting that he had, in fact, himself voted on multiple occasions. He

himself has provided a response to the commission that he did not vote on multiple occasions but obviously his name had been marked off on the role on multiple occasions, giving rise to the doubt as to whether or not there was multiple voting in that particular electorate on election day.

Similarly the Liberal Party candidate in that seat on election day spoke to an individual that claimed that she had voted 30 times in that seat on that day. I make no further comment other than to provide these statements for the consideration of the Committee that there are instances in that particular electorate of potential of multiple voting and that we would think that this inquiry might do best to inform itself as to the accuracy of those comments. There has similarly been inquiries made of our members about the effectiveness and cost of the production of what I understand to be described as the easier voting card; that in the lead-up to the New South Wales State election I understand that all voters were provided with a card that had the voter's name and address on it. This obviously came at a particular cost, and there are obviously a set of reasons as to why this card was issued.

We are uncertain as to the effectiveness of this particular undertaking. We are also uncertain as to the cost for the distribution of that card. We suggest that the inquiry satisfy itself that (a) that cost was a worthwhile investment and (b) understand the reasons for that card having been issued to ascertain as to whether it achieved a desired outcome, hopefully improving the administration of the election. Perhaps one of the most important issues that I draw to the attention of this inquiry is the Auditor-General's recommendations in relation to government or taxpayer-funded advertising in the period leading up to election periods. If I could draw the attention of the Committee to the findings of the Auditor-General that we have referenced in our submission.

CHAIR: Did you receive correspondence from the Committee in relation to specific parts of your submission?

Mr LAVERTY: I did.

CHAIR: Advertising for elections is outside the terms of reference of this Committee whose specific terms of reference is to look at the conduct of the actual functioning of the last election.

Mr LAVERTY: I do have correspondence under your signature of 10 March that alerts me to the establishment of the inquiry into political contributions, and we have made a submission to that inquiry. In your letter you suggest that the matters we have raised about election funding should appropriately be referred to that inquiry which is our intention. I would suggest that the point I am about to make about government-funded advertising in an election context had an impact in the administration of the election and that I ask that this inquiry consider the written submission that we have made, in particular the Auditor-General's suggestion that the current guidelines for government-funded advertising do not adequately provide for an independence of that advertising, and to prevent it from being used for party political parties.

CHAIR: It is really outside our terms of reference. I would like to stick to the terms of reference of the Committee and what we are empowered to deal with. We are empowered to deal with the actual conduct of the election, which are the aforementioned things that you discussed. The only two points in your submission that I believe could have been dealt with in another place or outside the terms of reference are the one that you mentioned and the political donations. I would appreciate if we could stick to the terms of reference.

Mr LAVERTY: I will endeavour to do so. I will note for the record that in your letter to me you did raise political contributions, which I have taken on board. We put the issue of the Auditor General's opinion that government funded advertising was currently not sufficiently structured so as to prevent it from being used for political purposes in the lead up to elections and that we think the Auditor-General's recommendations should be considered by this inquiry because of their potential impact on the conduct of the election. Having made that observation, I will do my best to continue on the terms of reference.

The final points that we would like to make are to note the evidence to this inquiry on behalf of two organisations—People with Disabilities and the New South Wales Disability Discrimination Legal Centre. In both of those submissions those organisations make a set of observations informed by their expertise as advocates for individuals with disabilities. We think that the principles they are

putting forward to ensure that elections are accessible to all residents of New South Wales, particularly those with disabilities, are important. In my capacity as spokesperson for the Liberal Party I do not pretend to be an expert on those matters. We encourage the consideration of the issues that those two respected disability organisations have made to this inquiry. That concludes my observations in relation to our submission.

The Hon. AMANDA FAZIO: Can I ask about an issue that was raised in your submission but that you have not addressed in your opening statement? It is an issue I have not encountered before so I hope you will be able to elaborate. In point (6) of your submission you say that concern has been raised with the Liberal Party of New South Wales that members of the police force are precluded from being involved in election campaigns in their private time. Can you elaborate on that, because I do not think that has been raised with us previously in our inquiry?

Mr LAVERTY: Indeed. A member of the New South Wales Liberal Party who asked that his name not be disclosed to this inquiry for professional reasons drew to our attention that there is a somewhat historic provision that prevents members of the New South Wales Police Force from actually appearing at polling places on election day in a party political capacity. In particular, his interpretation was that a police officer would be exposed to disciplinary action as a police officer in the event that they were handing out how-to-vote material on election day. I have that submission that the individual made to me but I did not bring it to this inquiry. I would be happy to take on notice the specific provision of the Act that he referred to and provide that to the Committee for it to satisfy itself as to the validity of that claim.

The Hon. JENNIFER GARDINER: In relation to the provisions that apply to the display of posters etcetera at polling booths on polling day, as you point out there are different provisions applying to different types of material. You say you do not believe there needs to be a dramatic change to the provisions. Do you think there needs to be any change at all to the legislation or is it really a concern about consistency of administration across polling booths?

Mr LAVERTY: The issue for us has been one of uniformity across booths within electorates and then in turn across the State. As all of the representatives of the Liberal Party who attend polling places on election day to hand out how-to-vote material are volunteers, as they are in the National Party and as they would be in the Labor Party and other organisations, these volunteers who interact with the electoral system perhaps once every four years are not lawyers and the rules are relatively complex. The issue we are drawing to the attention of this inquiry is the need to simplify the rules, in the first instance for volunteers on behalf of parties who give their time on election day, but more importantly for the staff of the commission that officiate at polling places. There are instances of officials themselves not having an understanding of, or indeed a uniform approach to, how they implement these rules across the State, despite the best of intentions. I make the point that from our experience officials always perform their functions on behalf of the commission with the best of intentions.

CHAIR: Do you want your submission included as part of your sworn evidence?

Mr LAVERTY: The written submission? I am comfortable with that.

Ms LEE RHIANNON: Can I ask about multiple voting? You gave a couple of examples. Were these people suggesting, or does it appear, that they voted with the same name many times or in fact were using other people's names when they voted many times?

Mr LAVERTY: The first point I make is that we have a handful of these examples. It is not our evidence today that there is widespread multiple voting across New South Wales. The instances I am drawing to the attention of this inquiry are quite specific.

Ms LEE RHIANNON: Just in Wollondilly?

Mr LAVERTY: We have examples of it occurring in other electorates. The two in Wollondilly that I have statutory declarations for are provided as evidence today. In those two instances an individual received a notice from the commission advising that their records indicated that he had voted on multiple occasions. That individual has provided a response to the commission to

say that was not the case. One person's name has been crossed off in multiple booths in the Wollondilly electorate. The second instance is of an individual themselves representing that they have voted on 30 occasions.

I make no claim on the accuracy other than that I have a statement to that effect to say that that was reported to a Liberal Party volunteer in the seat of Wollondilly. Our evidence would be that this is an instance of the potential of multiple voting at the 2007 election and that in the event that these instances are occurring in other places, it takes only a handful of votes in some seats to change the result and the outcome. Public confidence in the electoral system would need to require that we have both a system in place to prevent this from occurring and, where these instances are brought to the attention of inquiries such as this, that the inquiry satisfy itself that this is not a widespread problem.

Ms LEE RHIANNON: What about other electorates? You mentioned that it is in other electorates as well. Do you have some examples?

Mr LAVERTY: We have had anecdotal evidence of that in other electorates. I am reluctant to provide evidence to this inquiry that I cannot support with documentation.

The Hon. DON HARWIN: You raised the easy voting card in your opening statement.

The Hon. AMANDA FAZIO: This one?

The Hon. DON HARWIN: Yes, indeed. The member is holding one and waving it around. Are you asking us to have a look at the efficacy of those cards? Is there any particular reason for your raising easy voting cards?

Mr LAVERTY: A number of our members have asked the genuine question of what was its purpose and we have not been in a position to answer that with any accuracy. The second point is that there is obviously a cost involved in the production of those cards and we would assume that that was a substantial cost. The third point relates to the requirements under the Act for polling officials to take the identity of voters when they present to receive their ballot papers. If I understand it, there is a set of questions that the Act requires be asked relating to the name, date of birth and address, and that before issuing the papers the polling official is to establish the validity of the person's ability to take a ballot paper. At the moment, the Act does not require an item such as an easy voting card, so there does not appear to be a legislative basis for the easy voting card to have been issued. We seek to understand the reasons for that being issued and indeed whether it achieved the purposes it set out to achieve.

The Hon. AMANDA FAZIO: In relation to the incident in Wollondilly that you talked about where someone was written to by the electoral commission and told that they had voted multiple times, was the person told that their name had been marked off a certain number of times?

Mr LAVERTY: I do not have the detail to answer that question. It was certainly multiple as in more than two.

The Hon. AMANDA FAZIO: In point (7) of your submission you talk about people filling in ballot papers using Roman numerals. Roman numerals have not been accepted as a valid vote by the Australian Electoral Commission since just about forever. How many cases are you aware of where people tried to vote in Port Stephens using Roman numerals?

Mr LAVERTY: Again I do not have a specific number to provide, but the point we would make is that in seats like Port Stephens, where the outcome was a relatively close one, the role of the Act and indeed the ability to vote should be to enfranchise a voter to be able to cast a valid vote. The decision that was applied there in relation to Roman numerals perhaps did not enfranchise the voter to exercise a valid vote.

The Hon. AMANDA FAZIO: Was it a case where the person had just filled in a "1" on the ballot paper using Roman numerals?

Mr LAVERTY: I do not believe so.

CHAIR: Thank you, Mr Laverty.

(The witnesses withdrew)

COLIN ANTHONY BARRY, Commissioner, New South Wales Electoral Commission, Level 25, 201 Kent Street, Sydney, and

IAN WILLIAM BRIGHTWELL, Director, Information Technology Branch, New South Wales Electoral Commission, Level 25, 201 Kent Street, Sydney, affirmed and examined:

CHAIR: Do you wish to have your submission included as part of your sworn evidence?

Mr BARRY: Yes.

CHAIR: I thought you might like to speak about your report and your written submission to the inquiry?

Mr BARRY: I did not plan to make any opening statement other than to say that the commission has produced a comprehensive report on the conduct and administration of the 2007 New South Wales State election. It is the first report in that format where we have identified a number of key election processes. We have made comment on those processes in terms of the services that we have provided to registered political parties, to candidates and to the public. We have made some suggestions for improvements in the future and we have indicated some areas where there might be consideration for legislative change. As far as I was concerned, the election was well conducted. The 93 returning officers did an excellent job.

There were no court challenges to the result of the election, which is a very important measure. There were a number of close seats and I think the training that we provided to the returning officers, which was a considerable improvement on past training offered by the commission or the then State Electoral Office, is reflected in the fact that, by and large, the support from the key stakeholders—the registered political parties, the candidates—for the commission's efforts in that regard was well received. So without really going into any other particular areas perhaps, I would be happy to answer any questions that the Committee might have.

The Hon. AMANDA FAZIO: The last witness raised some concerns about the easy voting card. I have just looked at your report where you have a sample of the brochure, which I must have found handy because I still have the card in my wallet.

Ms LEE RHIANNON: Did you use it?

The Hon. AMANDA FAZIO: Yes.

Ms LEE RHIANNON: Did you show it when you voted?

The Hon. AMANDA FAZIO: Yes, I gave it to them. I went to pre-poll, but that is because I am usually too busy to go on election day. It is stated in your report that one of the reasons you sent out the easy voting card was because approximately 25 per cent of electors were voting in new electoral districts. Did you get feedback from people about that mail-out and the easy voting card, or did you do any research into the effectiveness of that initiative?

Mr BARRY: We did not do any particular research into the effectiveness of it. We did get anecdotal feedback from election officials and returning officers at debriefings that the card was well received, particularly in areas where the elector's first language is not English. It made voting for those people a lot easier. We also got feedback from people who said it clearly identified what electorate they were in bearing in mind that there had been a redistribution since the last election. So in that regard I think it did serve its purpose and as an aide-memoire to people that they are required to vote and as something that they can take along to assist the election officials, in that regard I think it was successful, but we did not undertake any detailed analysis of it.

The Hon. AMANDA FAZIO: Another issue that was raised earlier this morning was the incidence of multiple voting. Are you aware of allegations of multiple voting in tight contests?

Mr BARRY: I am aware of the allegations of multiple voting. We investigate all allegations and complaints about multiple voting. In most cases multiple voting boils down to two things. It is typically elderly people who have received a pre-poll vote, a postal vote, and some good neighbour or relative has taken the person down to the polling place on election day and the voter has not realised that they have already voted. That is typically what happens. In other instances it is where people whose first language is not English sometimes misunderstand when they go to vote at a polling place, they go back home and then someone else talks to them during the day and they inadvertently go back to the polling place or another polling place and vote again. Most of these cases are explained in those two instances.

The other instance where apparent multiple voting can occur is because the electoral roll is provided at each polling place in the district and it is possible that the election officials in a polling place mark a name either above or below the real elector's name on the roll, and consequently that shows up in the scanning of the rolls as an apparent multiple voter. We check all of these things and follow them up. At the State election we did have one gentleman who claimed that he had his name marked off the roll at four or five polling places and in his letter to me he claimed that he only voted once, but he wanted to prove that you could go in and have your name marked off more than once. I sought legal advice on that and was advised that, whilst he may have had his name marked off the roll, he did not vote and consequently there was no case for him to answer.

The Hon. DON HARWIN: What was the cost of producing the easy voting card for all electors?

Mr BARRY: There was a cost associated with the mail-out of the brochure. The actual easy voting card itself was not separated out in terms of the cost. I could find out the cost of the brochure, but there is no actual breakdown of the cost of the easy voting card because it was just a punch-out part of the brochure, but I would have to take that on notice.

The Hon. JENNIFER GARDINER: In your report you have mentioned that there was some concern about the date of birth appearing on the card and that you might review that. Is that simply an administrative thing and you may put the date of birth on a less obvious part of it or delete it?

Mr BARRY: The reason we put the date of birth on the card was because, for the first time with the change in legislation, electors were going to be asked their date of birth. What it did was point out that there were some mismatches on the printed roll between what the elector declared was their date of birth and what was on the roll. But we did receive some complaints about the date of birth and I think in moving forward I probably would review that decision in the light of some compelling evidence about identity theft, but certainly for the last election I thought it was an appropriate step considering the fact that people are going to be asked their date of birth.

Mr ROBERT COOMBS: Did you detect increasing difficulty in being able to secure both polling places and pre-polling places? Secondly, was there any complaint especially from elderly or disabled people in relation to traditional voting places?

Mr BARRY: We always struggle with finding suitable venues that have access for disabled people and, with an ageing population, people who struggle to walk up steps and things like that. As the Committee is aware, we do not own any of these buildings, we rely on community facilities that exist in order to select polling places, so in that regard it is a challenge. We always receive complaints about polling places—that is not unusual—but again the response is that we do not own these buildings, we rely on the facilities that exist in the community. I am conscious of the fact that for elderly people some of these polling places are difficult to get to.

What compounds the problem is that, notwithstanding the fact that we seize opportunities to remind people who might require a little bit more time to vote not to go to the polling place at 8 o'clock in the morning but perhaps go after lunch when the polling place is a bit quieter and they do not have to stand in queues, regrettably many of these people turn up very early in the morning when there are queues and they have to wait in queues, and I can understand their frustration.

Ms LEE RHIANNON: Commissioner, looking at the AEC web figures, many people turn up to vote but their vote is not accepted. Do you have publicly available figures on how many vote applications were rejected in the 2007 election?

Mr BARRY: Just to correct one thing, if anybody turns up to a polling place and their name is not on the roll and they claim that their name has been removed from the roll in error, they can claim a section vote, and they should do so. I do not have the facts and figures.

Ms LEE RHIANNON: My question was about the section votes. Do you have data on how many people claim section votes and how many of those votes are accepted?

Mr BARRY: I do not have that and I would have to check back at the office. We certainly have information about the number that has been admitted to the count. As to the first part of the question about how many were actually issued, I am not sure. I will take that question on notice. What I can say is that a very high proportion of these votes are not admitted. In other words, upon investigation it is found that the person is not enrolled and their name has been properly removed from the roll.

Ms LEE RHIANNON: Would it be possible to record and make public the number of section or provisional vote applications, the number of those applications where the vote is counted and the reason for the authority's refusal of those applications that were not accepted? Could that be documented?

Mr BARRY: Yes, it could. I could give you the reason now that they would not be accepted. It is because the elector's name would be removed through the legal process of taking them off the roll.

Ms LEE RHIANNON: To go to the next stage, could enrolments using, say, motor registry records to update the roll be activated in New South Wales, irrespective of what the Australian Electoral Commission may choose to do?

Mr BARRY: Yes, it could. In fact, the Committee is aware that we are working on a smart electoral enrolment project, which would change people's addresses on the roll based on information from a trusted agency, such as the Roads and Traffic Authority.

Ms LEE RHIANNON: Are you working on that at the moment?

Mr BARRY: We are doing some work on that project.

Ms LEE RHIANNON: How is it progressing?

Mr BARRY: It is progressing very well. The Government has provided the funding that we sought to do the first stage of it which is to develop a business case and analysis of how this might work; to do some testing with some information that we have from the TAFE colleges; to see whether electors who we know should be enrolled are enrolled; and how we go about, in fact, moving into that smart enrolment process.

CHAIR: One of the areas that has been raised in a number of submissions and is also in your report is postal voting. Could you outline to the Committee your views as to procedural and legislative changes that need to be made in relation to postal voting to ensure as many people as possible cast a vote?

Mr BARRY: The biggest challenge in the postal voting process is in areas of regional and rural New South Wales. Some parts of the State only receive a mail delivery once a week. Consequently, bearing in mind that there is only a two-week period in which a person can get a postal vote, if a person leaves it late in making application and they miss the mail going to the returning officer, effectively they are going to miss getting their ballot papers in the end. It is a very tight window for those people. I have mentioned this to the Committee before that, in my view, a way forward with this is to do one of two things.

A light touch approach to this would be to make these people register as a general postal voter. If they are already registered as a general postal voter the returning officer will mail the ballot papers to them without application. That would improve these people getting their postal votes in time. Whether they get back to the returning officer, that is another matter. A longer-term solution to this in my view would be to enable these people to vote online. Enabling them to vote online would mean they could do it from their homes and they can make certain that their vote is received in time.

So there are two solutions to it. The first one is to make it mandatory that these people who live in defined areas of remote parts of the State have to register as a general postal voter. I was rather disappointed because I met with the Australian Electoral Commission and we agreed that in certain areas of the State where we know these people live we would write to them and encourage them to register as general postal voters. I was quite disappointed at the uptake of that. Consequently, we are back to the situation where the returning officer has to, first of all, get the application and turn them around on the same day. But with one mail delivery each way, regrettably those people miss out on a vote.

The Hon. DON HARWIN: As to the exercise of the AEC and yourselves writing to remote voters, could you give some specificity about that? When did that exercise take place?

Mr BARRY: Mr Harwin, I would have to take that on notice. It was late in 2006 and there are some numbers around it. I know I make comment of it in the report, but there are some numbers around it.

The Hon. DON HARWIN: If you could, that would be helpful. Could you specify how many people were written to, in what areas and their response rate?

Mr BARRY: Yes.

The Hon. DON HARWIN: That information would be helpful to the Committee in judging whether a legislative change is required to go to the next step and require them to register as registered postal voters.

Mr BARRY: Yes.

The Hon. DON HARWIN: As a follow-up, if we were to go down the legislative route, do you have an opinion or suggestion as to the areas of the State or the conditions that you would set in terms of those whom you would require to register under legislation?

Mr BARRY: My view would be that the first starting point would be the Australia Post areas that have only one mail service each week and you could work back from there.

The Hon. JENNIFER GARDINER: Mr Barry, do you have an estimate of how many voters missed out because of the mail problem and who tried to get the vote counted but it arrived too late?

Mr BARRY: I do not off the top of my head. I would have to check back at the office to see whether we have information on that. I do know that in the country areas, those areas that we have talked about, there are a considerable number of people.

The Hon. JENNIFER GARDINER: Another suggestion you have made on this topic is to introduce mobile voting, as occurs for remote voters in Federal elections. You suggest that would require a legislative change also, but it may be a more cost-effective way of giving access to those voters rather than dispersed divisional returning officers and the like pre-poll. Do you consider it would be advantageous for the Committee to make recommendations along those lines?

Mr BARRY: Yes, I would support that. One of the things that the Committee needs to be very mindful of, and it sometimes gets lost in people's thinking, is that the Federal election is run on a minimum of 33 days, which effectively allows three weeks from the availability of ballot papers through to the election day. In fact, the last Federal election, I think, was run on an even longer time frame. In the New South Wales election we do not have that. We have only two weeks. So even doing

mobile voting I still think is probably a halfway solution because for some of these people it would be difficult to travel to a mobile voting facility. The mobile voting facility is going to turn up at a town hopefully timed for market day, or days like that, but it is still going to be a less than optimal solution.

The Hon. JENNIFER GARDINER: So I-voting is the preferable way to go?

Mr BARRY: My recommendation would be the I-voting route.

The Hon. JENNIFER GARDINER: As to the timetable for the election, a recurring theme is the issue of the writs not necessarily occurring on the same day as the dissolution of Parliament. Again, would it also help if the Committee revisited that issue?

Mr BARRY: Yes. I notice that sometimes people in their submissions say that I should do something about it. I want to impress on the Committee that this is not an administrative matter. It is a matter of the law and a matter for the Government. It is not a matter for the Electoral Commissioner. Whilst I can make a recommendation, I think that is about all I can do.

The Hon. DON HARWIN: Mr Barry, I want to clarify the matter. We have talked about three different options for remote voters. Your preference would be, one, I-voting and, two, requiring people in remote areas to register given the two-week window that we have. The third possible solution but suboptimal in the context of time frames imposed by legislation would be the mobile voting teams?

Mr BARRY: Yes.

The Hon. DON HARWIN: As to the third possible solution, are you aware how the people in New South Wales vote in Federal elections using mobile voting teams?

Mr BARRY: No, I am not, Mr Harwin.

The Hon. DON HARWIN: Would that information be on the public record or would you be able to get it from the AEC?

Mr BARRY: I will make inquiries.

The Hon. DON HARWIN: And would you provide that on notice?

Mr BARRY: Yes.

The Hon. AMANDA FAZIO: Continuing on with remote voting, in your report you said that in February 2007 the AEC did a mail-out to about 3,000 people and that only 578 applications were received from people to be put onto the general postal voting roll. It also says that a short survey about voting options was included with that letter. Did the State Electoral Office collate the results of the survey or was it done by the AEC?

Mr BARRY: Thank you for drawing that to my attention. They are the numbers that the AEC wrote to. Yes, they did collect a survey but I do not know the result of that. I will have to find that out from the AEC.

The Hon. AMANDA FAZIO: Would you be able to do that?

Mr BARRY: Yes, I will. I think that is very indicative. There were 3,000 people written to and only about 500 took up the option. They were in very remote parts of the State, very remote.

The Hon. DON HARWIN: Three thousand people are not many.

Mr BARRY: No, it is not. But you can see that only 500 of them took up the option, and these are people in very remote parts.

The Hon. AMANDA FAZIO: You wrote to Balranald, Bourke, Carrathool, central Darling, Cobar, Hay, the unincorporated Far West and Wentworth, which all sound a long way away.

Mr BARRY: Yes.

Mr ROBERT COOMBS: To say the least, voting is an excuse to come to town.

The Hon. DON HARWIN: What information can you provide to the Committee about the electronic voting trials in the 2006 Victorian State election and whatever trials were conducted during the 2007 Federal election? Do they give you the confidence that we should be looking at it more closely for future New South Wales general elections?

Mr BARRY: I think what they do is make it very clear that we do not want to go down those routes. The Victorian trial cost about \$700,000 for the software development and the hardware was provided gratis. These were standalone kiosk voting like an ATM. I think 198 people used it. That is a very expensive option. The Australian Electoral Commission did something similar at the Federal election, naturally on a broader canvas, but the voter turn out, I think, compared to the cost again was very high when you are requiring people with a vision impairment to go to a specific location and use the equipment. While the equipment, in the case of the Federal trial, was certainly simpler than the equipment that was on offer in the Victorian trial, nevertheless that cost is extremely high.

Again, I think the solution to this is the I-voting solution. One of the challenges in this is that we have to listen to what the people with a vision impairment are saying. Obviously the people who turned up at those locations and used the e-voting solution thought it was very good, but it is the people with a vision impairment who did not, and what they want is a solution in the I-voting world.

The Hon. DON HARWIN: What would that look like, do you think?

Mr BARRY: What would it look like—what do you mean?

The Hon. DON HARWIN: Just outline for the transcript how the I-voting system would work?

Mr BARRY: The other trial that the Australian Electoral Commission did at the Federal election was an I-voting trial with people in the defence force. That was a trial where ballot papers were forwarded to people over the Internet; they marked their ballot papers and then sent them back. It was a service provider who provided that trusted regime and that worked very well. It was very cheap compared to the arrangements for the people with a vision impairment. That is certainly something that is more doable. You can see from what I have said before about people in remote parts of the State—it piggy backs nicely so it services people in the remote parts of the State and it can also service people with a vision impairment.

The Hon. JENNIFER GARDINER: You mentioned in your report about the need to clarify the definition of a "poster", and you seem to have a particular objection to digital road signs. I happened to be in Paris during the French presidential election and the electoral authorities themselves were using digital road signs to encourage people to vote. So I was struck by your problem with such signs.

Mr BARRY: The issue I have with the digital road sign—I think there was only one—was, first, they are not authorised, so people can put whatever they want on them. Secondly, the issue I have with them is, I guess from a responsible citizen's point of view, my experience of those signs is they are often used as a hazard warning for motorists. If we are to allow them to be used for election campaign purposes, I think there is a risk that they will be diminished in terms of their importance to alert people to road hazards. From an Electoral Commission's point of view, you cannot authorise them, and if they are not authorised, then I think people can start putting things on there that other parties and candidates will take objection to, but it is clearly outside the realm of the legislation. It is not contemplated.

The Hon. AMANDA FAZIO: How do you organise voting for people in prison?

Mr BARRY: People in prison are offered a postal vote.

The Hon. AMANDA FAZIO: How do they get how-to-vote material? Do people have to post it to them?

Mr BARRY: They are not provided with any how-to-vote material in the postal voting material that is sent by the returning officer. They will have to get it in the same way as any other postal voter gets the material.

The Hon. AMANDA FAZIO: What address do they vote for? Do they vote for the address of the prison or their last enrolment—

Mr BARRY: Where they are enrolled.

The Hon. AMANDA FAZIO: —in the community?

Mr BARRY: Yes.

Mr ROBERT COOMBS: Are they fined if they do not vote?

Mr BARRY: It is an excuse, so they are not fined.

Ms LEE RHIANNON: Just staying on that same line of questioning, if prisoners did ask for how-to-vote information—the material that is available to voters at regular polling stations—do you supply any of that material?

Mr BARRY: No, we do not supply any how-to-vote material to anybody.

Ms LEE RHIANNON: But I thought that people, when they go to a polling booth, can request to see the information. Sorry, I am just getting muddled up from when Mr Green was speaking. On another matter, we have received a submission from Mr Borger, who is now a member, and he raises issues to do with intimidation at polling booths. Do you receive reports of intimidation? Is this collated from polling booth officials who may have had to deal with problems?

Mr BARRY: We get a small number of complaints from people regarding allegations of intimidation. My response to those complaints is that they need to take the matter up with, in the first instance, the polling place manager. But if the matter is serious, when you are talking about intimidation, that is a matter for the police; it is not a matter for the electoral officials to deal with. Electoral officials do not have powers of arrest and they do not have any powers to demand people to cease doing something. That is what the police are for. I read these things very carefully and I take them seriously, but at the end of the day we need to remember that elections are conducted in a fairly robust environment and in some polling places there is some enthusiasm on the part of either party or candidate workers that might go a little too far. Often when the polling place manager reminds them of their obligations things settle down but where we are talking about intimidation we are in an area that requires the police to intervene.

Ms LEE RHIANNON: Do you think there is a place for a police presence at, say, the larger polling booths in marginal seats?

Mr BARRY: We write to the chief commissioner and ask the chief commissioner to undertake regular surveillance of polling places on election day, particularly in the morning, just to make certain that things have settled down. But I certainly would not like to see a constant police presence at polling places. I think that is very un-Australian. The issues that have been raised are not new. They come up at every electoral event. I am yet to have presented to me any evidence of physical violence. There is often a lot of allegation; they are in the spur of the moment. Election campaigns are robustly contested by some party and candidate workers but at the end of the day I do not think there is any endemic problem.

The Hon. AMANDA FAZIO: Can I ask you about the procedural changes that were put in place for declared institution voting? I know in the past you would have the returning officer go

around and you would have a bunch of scrutineers trying to thrust how-to-vote cards in poor confused, dazed elderly people's faces. Now you have this provision that people can ask the returning officer who will give them a folder with all the registered how-to-votes in it. Has that made the process easier? Did you get any feedback from returning officers on this new procedure?

Mr BARRY: The feedback we received from the debriefings was that it worked well. It was certainly better having scrutineers—scrutineers were never able to give people how-to-vote cards. So often the difficulty that voters faced was that they were presented with the ballot papers and they did not have any information about the candidates. So it did in that regard serve a purpose, and I think as a first step in that area it worked very well.

The Hon. JENNIFER GARDINER: In terms of the list of declared institutions and the determination of those, is it problematic that you are not automatically a voting place just because it is a nursing home. Should the extent of the provisions be reviewed?

Mr BARRY: I think I have mentioned to the Committee previously that there is no single point of contact to get a list of all the declared institutions. These places range from retirement villages, nursing homes, special accommodation facilities. It is very difficult and they often surface once the writ for the election has been issued and we find that there is a place in Coffs Harbour we did not even know about, so they do materialise, and with an ageing population they are increasing. They are a very challenging environment and I am particularly sensitive to the dignity of the voters. We rely on the administration of the facility to indicate first to us because the ones we know about we write to well before the election, to ask them what sort of service would best suit their residents.

In some cases they like to get a postal vote application; in some cases they want the mobile team to visit them; and in some cases they tell us that their residents typically have dementia and they just cannot vote. But even on the day when the mobile teams go around, sometimes people are very frail, they are sick and in my view their dignity needs to be preserved, that they are not put under undue influence to vote. It is a very challenging area and it is one that we have to deal with sympathetically but at the same time be respectful of the voter's dignity.

The Hon. JENNIFER GARDINER: Are there any recommendations in that regard that you think we need to consider?

Mr BARRY: One of the things I think we should consider is to enable people to have an ordinary vote at these institutions. At the moment a person is required to complete a declaration so it is a vote in a declared envelope. When you think that these people, they are elderly, in some cases they have early stages of Parkinson's disease or they have various disabilities. Some of them have severe arthritis. We are asking them to go to more trouble than if they are to some extent voting at a polling place. I think the mere fact of presenting them with an envelope—sure, the election official can fill in their name and address but they must sign it. There may have to mark the ballot papers. I think it would be just as easy to have the roll, marked the name off the roll and give them a vote as though they were actually in a polling place and the ballot paper goes into the ballot box and is counted later at the returning officer's office after the poll has closed.

Ms LEE RHIANNON: I was interested in your response to the status of the current legislation with respect to misleading information and section 151A. I am aware that there was a court case that seemed to interpret that section in a narrow sense just in relationship to casting one's vote. Do you get a lot of complaints about misleading information? Does it mean that most of those complaints cannot be acted on because of that court case, which seems to interpret the Act quite narrowly?

Mr BARRY: I think that the court case¹ to which you are referring is one of the landmark court cases. From an electoral administrator's point of view it is the Holy Grail. A lot of people complain to us that someone said something about a candidate. The candidate said "That's not true. It's not the case that I drive a V8-car, I actually have a four-cylinder car." That is not material, as far as we are concerned. It does not go to the extent of misleading information about how to cast your vote if electoral administrators are brought in for sorting out all that other stuff. I think we need to go back to

¹ *Evans v Crichton-Browne* [1981] HCA 14; (1981) 147 CLR 169

what Justice Kirby said in a recent case that he dealt with in the High Court. I think it is very sensible to recognise that candidates and parties need to be given the maximum latitude to conduct the election campaign. We have got to recognise that these campaigns are part of a candidate putting forward their manifesto. It is conducted in an environment of pretty robust debate, and in the cut and thrust of politics that is what the people have got to judge.

We do not want electoral people coming over the top and saying "Look, it wasn't the case he has got a V8-car. He's got a four-cylinder car. You go and put out a retraction". That is not our role and I do not want it to be our role. I do not think it is really in the public interest because we want to give parties and candidates the maximum latitude, and let the public decide, not have Electoral Commission people coming in and narrowing a debate. I guess I support the Michael Kirby view that the legislator only legislates in a minimalist way to allow the parties and candidates the maximum scope to conduct their campaign because it is the public really who has to decide and test the veracity of what people are saying.

The Hon. DON HARWIN: Mr Barry, the Committee draws your attention to submissions of Mr Green and Mackerras about the perennial issue of the two-party preferred vote and you would know their concerns without reading their submissions, I imagine. Firstly, I congratulate you on this very good publication. Pages 99 and 100 outline what is called the two-party preferred vote which I welcome being in there. Mr Mackerras' submission draws, however, some attention to the discrepancy between the statistics on pages 99-100 and the preferential counts for individual seats. The Committee received evidence this morning from Antony Green that the reason the Australian Electoral Commission can do this but the New South Wales Electoral Commission cannot is because of electoral resourcing, which I understand. Approximately how much do you think it costs to provide the sort of information that is provided for federally which would ensure there are not, from a resourcing point of view, understandable discrepancies because of the lack of availability of a check count on the two-party preferred vote?

Mr BARRY: I have asked Mr Brightwell to come along. Ian understands the steps that were involved in all of these counts. Through the chair I provide members of the Committee with a diagram as to these counts and then Ian can walk you through each of the steps. We agree with what Antony Greens has requested, and we will do it. We can understand what Mr Mackerras is asking. The media and election psephologists are key stakeholders in our organisation. We do try to accommodate their requirements. One of the challenges with Mr Mackerras is that he does not use the Internet so consequently him wanting printed copies of things does present us with a little bit of a challenge. But if Ian can walk you through what we have given it might help.

Mr BRIGHTWELL: The document circulated is an overview of the various counts we do at various stages. On the left hand side we have a number of green boxes which are the broad timeline element for the election. The next column relates to what we call first preference, or what is sometimes called the primary count. The second column relates to the distribution of preferences, and then for completeness we have added a third column which relates to the Legislative Council. You can see on the very first row which is on election night we do a primary or first preference count of all votes in a polling place. We also do what we call a notional count which is a notional candidate count and that is distinct from what is often referred to as a two-party count because we do not necessarily deal with the two major parties, we deal with the two candidates that are most likely to win. Then we also count the first preference votes for the group. On election night you have results at the polling place level for first preference, notional distribution by candidate, and the groups for the Legislative Council.

We move then to the Sunday when we do what is called the check count. On the Sunday we check count all the votes, what we call ordinary votes or primary votes, which are collected in a polling place for the purpose of their first preference. At that point we do not do another notional distribution. So understandably—and this is the key point—there are minor differences between the count that is done in the polling place and the count that is done as a check count on Sunday. Mr Green's paper clearly indicates that there are a few votes here or there by candidate that change, and that is for reasons of formality, interpretation, scrutiny and also, given the nature of polling place counts, they are quite provisional.

We then move on in the process to after 6.00 p.m. on Monday when we can properly deal with all declaration votes. At the last election we counted those declaration votes both in their first preference form and notional form. That is to say we used the notional distribution of the selected candidates for the declaration votes. Now at this point I want to draw the attention of the Committee to the colourings that I have used. In the first row at the top we have a blue box and a brown box and they are to indicate that they are the two different colouring. If you look immediately below the blue box, the next blue box is to do with the notional counting of declaration votes. You can see that you can effectively get a picture of the notional distribution of votes to those two candidates by looking at the election night result for the primary votes, and adding it to the declaration votes, which come after Monday. At that point you have a complete picture of the notional distribution of the two candidates most likely to win.

You might note that we also have yellow boxes, the first one being for the check count, and the second one being for the declaration votes below it. When you take the summation of that you have the full first preference position for the election and that is, in fact, the starting point for the full distribution of preferences which is the yellow box which is below the distribution of preference column. So, in summary, you have notional distribution of preferences results being reflected in election night, primary ordinary votes, and post-election night declaration votes, that is notional distribution. You have your full distribution of preferences reflected by check count and declaration votes reflected at a later stage of full distribution of preferences. As we discussed earlier, the election night polling place results are slightly different to those which are done on the check count on the Sunday. There are minor differences. That point is key to the issues raised by Mr Mackerras.

I refer the Committee to page 74 and the few bullet points on page 75 of our report where there is a description of a two-party preferred count, which I will not read. It clearly describes that for those districts where the candidates were the two parties, we use those results on pages 99 and 100. You can see, for instance, in Albury the first two candidates were the Coalition and the Australian Labor Party, as it said in bullet point one, which were used from the election night notional figures. Then it goes on to describe what we did in relation to those candidates that were not selected on election night and subsequently did not win, that were the Coalition and Labor. That section on pages 74 and 75 described what is contained in the table on page 99.

In the first instance, Mr Green in his submission highlighted in some detail and quite accurately what we did, and identified the issues that could be raised by that. Mr Mackerras in a somewhat more granular fashion went through and identified what he called areas of discrepancy. The commission has recognised the problem with using what we call election night notionals as opposed to the votes which are correct and final counts, and the discord that it creates in this report. We would propose in future reports, and indeed we are proposing to do for the purpose of the Internet an addendum to this report, to use in those districts which Mr Mackerras describes as the classic count districts, the full distribution of preferences for the purpose of defining the two-party preferred results. In all cases identified by Mr Mackerras as a problem we can resolve the issue that he identified.

That deals with the issues that Mackerras has raised, other than those that relate to timing and availability which the commissioner will address, and it deals with, in part, the issues that Mr Green raised. The only other issue in relation to Mr Green's submission would be in terms of the amount of counting that might be done in relation to what we would call check count notional distributions, and again I will hand that back to the commissioner to deal with.

Mr BARRY: In future, rather than do a notional distribution of preferences at polling places on election night and a check count of the first preference votes on the Sunday, we will do the notional distribution on the Sunday and I think that will satisfy what is clearly a gap in the processes. What Ian just said I think explains the Mackerras issue, and we will correct that on the Internet. We selected the two-party preferred distribution of figures on election night; we did not use the official distribution figures that were available well and truly after election day. We will correct that on the Internet. The thing we need to keep in mind about this is that one of the challenges is that our responsibility is to count the election and get someone elected. The challenge that we have in these steps is they are part of the additional processes that we go through. We are not required by law to do it, but that is not to say we will not do it. We recognize that the media and commentators need this information and we will certainly do it next time.

The Hon. DON HARWIN: Mr Brightwell, you might confirm this: the uncoloured box is, for example, Lake Macquarie where an Independent member was elected, but in the two-party preferred vote figures on page 99 it is expressed as Liberal versus Labor. They are obviously not done until after everything else is finished, are they? There is some time gap.

Mr BARRY: Mr Harwin, that explained the exchange of correspondence between Mr Mackerras and me. I want to again preface my response by saying that I have a great deal of respect for Mr Mackerras, but he was asking me to do this by letter and we are running up to Easter. I just put him on notice that this was a resource issue, because I was not aware of the extent of the effort involved in reconstituting some of these districts to do a two-party preferred count. It is an effort. But I never said we would not do it. If Mr Mackerras had spoken to me I would have explained that to him.

The Hon. DON HARWIN: Another concern has been raised in relation to the presentation of material on the website, and perhaps this is something you can consider and take on board. There was some dissatisfaction in relation to the Legislative Council count and the percentage figures that were being put on the web. They were a percentage of the total vote rather than a percentage of the total formal vote. Of course, the level of informal voting is irrelevant to the calculation of the quotas and more than one submission to us has requested that that be reformatted in future so that it is more obvious and clear how the candidates are going in the election and their prospect of success. I think it is in the Greens' submission from Chris Maltby. There certainly was quite some comment about it at the time.

Mr BARRY: If I could make a general comment about the Legislative Council count—Ian may have a follow-up comment—we do our best to give information by counting the Legislative Council first preference for groups in the polling place on election night, and that is it. We do not give any further information and consequently that is subject to all the foibles that go on at the polling place, bearing in mind some of these are going on at 10 and 11 o'clock at night. I do not have a solution to the Legislative Council because of the massive effort that is required and the data entry. At the end of the day there is an official count, and that is it. I cannot offer any comfort in that area.

The Hon. DON HARWIN: On the other hand, though, you release progressive totals during the process of the count and I think there is a small concern in relation to the material you put out about the percentages. It was expressed during the election as a percentage of the total vote rather than of the total formal vote.

Mr BARRY: Maybe Ian can respond to that one.

Mr BRIGHTWELL: The Committee is probably aware that the formality rules that relate to the Legislative Council paper are in fact quite onerous and difficult to be comfortable with. In fact, when we are asking people to count Legislative Council papers in a polling place we are not asking them to make formality assessments beyond that of papers that are completely blank. The end result is that we do not have on election night—and those are the figures you are referring to—

The Hon. DON HARWIN: No, I am not actually, I am referring to the progressive vote counts that you put out from your Legislative Council voting centre at Riverwood—it was at Riverwood at the last election—after those papers were taken to Riverwood and as they were being progressively entered. You were putting out progressive vote totals by party. That is the information I am talking about; I am not talking about polling night.

Mr BARRY: All right. We will take that one on notice, Mr Harwin.

The Hon. JENNIFER GARDINER: In relation to the notional distribution of preferences of Assembly candidates, what benchmarks does the commission use in assessing who are the most likely two final candidates after distribution of preferences?

Mr BARRY: It is a very challenging issue. There is no crystal ball. What I did at the last election is that I consulted Mr Green on who might be the candidates. In fact we had a number of conversations. At the end of the day I used my intuition and regrettably—I guess I should say that on the positive side I got most right—there were some we got wrong.

The Hon. DON HARWIN: How did you go?

Mr BRIGHTWELL: Four.

Mr BARRY: I was very pleased to see in Mr Green's submission no criticism of the candidates that were selected.

The Hon. JENNIFER GARDINER: On a different topic, one of the earlier submissions requested consideration be given to finalising a list of polling places, say, two months out from polling day. I know that in the lead up you gave an indicative list of polling places to the registered political parties. I wonder whether that could be finetuned next time.

Mr BARRY: Yes. We faced a number of challenges in running up to the 2007 election that the Committee is aware of. Selecting polling places is a key part of the process. I am aware that in an ideal situation I would like to give the polling places and have them settled by December in the previous year. I think that should be achievable in the future.

The Hon. DON HARWIN: What were the impediments to doing that this time? There were not a lot. In the seats in which I was principally working, one seat was the same and in the other seat one had been added. I know there were not a lot, but what were the impediments to finalising it in 2007? Was it just the changeover to the new system in terms of the arrangements between you and the district returning officers?

Mr BARRY: There were a number of things, Mr Harwin. One was the redistribution, which required re-allocating polling places to new electorates. The commission simply did not have—we were developing systems on the go in running up to that to be able to do it in a more accurate way. In the past it was simply done with paper. We did not have a geographic information system [GIS] in the commission, for example, and we were working initially with paper. We moved towards introducing a GIS, so there were all those moves to get the commission into a better state to be able to deal with this stuff. That really was the crux of it and we were just running out of time.

The Hon. DON HARWIN: So you are reasonably confident that it could be finalised by December 2010?

Mr BARRY: I certainly agree that when we do the briefings for the registered parties we want to give them a list of polling places that are absolutely settled, bar buildings burning down or something like that.

CHAIR: Thank you, Commissioner, and Mr Brightwell, for your time. It has been a very informative session.

Mr BARRY: I did notice something in some of the submissions: for the purposes of transparency I have available the reports that were commissioned on performance, if you want them. We did a number of performance audits relating to awareness of the election campaign. We engaged some people to consult the media about what they thought of our performance during the election. We also engaged an independent organisation to do some feedback from the registered political parties on how they saw the election. If the Committee is interested in having the actual reports tabled I am more than happy to give them. It is not in the report, but it is referred to in the report.

CHAIR: We would be very interested in that. Would you be okay with that also being made public?

Mr BARRY: Yes I would.

CHAIR: Thank you.

(The witnesses withdrew)

CHRISTOPHER MALTBY, Registered Officer, The Greens NSW, 19 Eve Street, Erskineville, and

LESA DE LEAU, Campaign Director, The Greens NSW, 19 Eve Street, Erskineville, affirmed and examined:

CHAIR: We have received and read your submission, and some of the contents have been touched on. Would you like to make an opening statement?

Mr MALTBY: Yes, by leave of the Committee, we have some areas to cover.

Ms DE LEAU: We will endeavour to share our time, and thank you for this opportunity. We wanted to emphasise some of the points that are in our written submission. I would like to start first with the point we made on strengthening legislation to stop false statements and emphasise that there is a very narrow interpretation of misleading in casting of a ballot and this therefore results in no legal sanction of malicious untruths about policies, candidates and parties.

Further to the submission and what we have written, we wanted to draw some attention to some intimidatory behaviour that we witnessed and were notified of at polling booths during the 2007 State election. I have numerous examples. I have read the submission from the member for Granville. We also received reports of similar behaviour in the electorate of Granville. I had a personal experience at Brighton-le-Sands, in the electorate of Rockdale, where a volunteer for the Christian Democratic Party was quite vitriolic in her representations of Greens policies as voters were coming in to the booth. The polling official repeatedly came out to address that polling booth worker, but no action came of that. At the Leichhardt booth in the Balmain electorate we have evidence of two young men presenting as Greens, but they were not representing Greens policies, they were actually misrepresenting, and again the polling booth official was unable to curb that behaviour. The police were called, but they were unable to bring about any cessation of that action.

There was a very publicised incident at the Sydney Town Hall and I would like to table what I have obtained from the *Daily Telegraph* website. Senator Bill Heffernan actually grabbed hold of Greens how-to-vote cards and did not relinquish those until the police ordered him to do so. He continued to harass Greens polling booth workers, and we would say voters who were going in to vote by misrepresenting Greens policies. The pattern here is that polling booth officials were unable to curb this intimidatory behaviour and we would say that does have an impact on the democratic right of voters to go in to the booth without harassment, and also volunteers who are there handing out material, doing what they feel is their civic duty on polling day.

I also want to emphasise an example with public sector employees, some changes that went through to the amendments in the teachers' handbook, which impacted on public school and TAFE teachers. This came about only in very late February, just before nominations were to go in. The Greens had 14 candidates who were affected by these proposed changes. One was compelled to withdraw as a candidate despite months of campaigning in her own free time. Those amendments were withdrawn and we would like to emphasise that it is quite undemocratic for public sector employees to be forced to take leave if standing as a candidate in an election, and it is certainly unnecessary if the appropriate guidelines are in place.

Mr MALTBY: I think the other issues that we would like to cover are the general question of exclusion from rolls and roll maintenance. I think the commissioner in his report identified a decline in the proportion of enrolments at this election—quite a substantial one. There is a trend downwards and I think there has been a philosophy perhaps at the Australian Electoral Commission [AEC], if not in New South Wales, where roll maintenance has come at the expense of participation. I think the Greens would like to see some changes there to make it easier for people to remain enrolled, for example, by using Roads and Traffic Authority driver licence databases and other things to track people's enrolment and to automatically keep them enrolled rather than boot them off and force them to re-enrol. I think that has an important impact on participation generally.

The other issue in relation to the rolls and voting is the trend in increased postal and pre-poll voting. The pre-poll voting question is essentially one of resourcing. There were long queues at many

of the pre-poll centres. I think that is a trend that we will see continuing. It may be related to changing work relationships, with more people working on weekends and less able to vote, or it may be just fashionable, I do not know, but it needs more attention. On the postal voting question I think we are seeing a significant increase in postal voting, which is probably unnecessary and unwarranted, and also postal voting is perhaps the least secure or most open to fraud of the available voting methods because once you have mailed the ballot paper you really have no idea who is going to complete it.

There are also privacy impacts with primarily the major parties conducting postal ballot campaigns receiving the returns back from voters often unsuspecting that they are replying to a political party instead of to the commission, and then the information gathered from that application being used to transmit how-to-vote material and other things to candidates. That is a very expensive way of campaigning. It is obviously valuable, but I think it is not supported in terms of participation and fairness generally and it also has privacy concerns, which I think voters would be unhappy about.

In relation to proportional representation, the Greens have a policy position in relation to that. I notice that it has come up in submissions to this inquiry and in previous inquiries, and I think there are many advantages to proportional representation, which we do not need to go into but I think the Committee should consider. I will not mention the Legislative Council vote quota thing on the website. With the commissioner's position, I think what has happened is a software problem and they just need to correct that error, but it was certainly very frustrating for many people unable to make sense of the results.

As a final point, in relation to the reuse of how-to-vote materials at polling booths, many of the Greens booth workers like to collect how-to-vote materials from all the parties, if that is possible, and then return them to booth workers so that they can be handed out again. It cuts down on wasted paper and generally is a good thing. Sometimes there are issues with staff impeding access to the recycling bins, and I think that could be addressed and a policy prepared in relation to that. In some cases, however, on the other side, the staff were very helpful and were actually collecting the material from voters as they left the booths, sorting it and bringing it back out, so I think that would be something that would be an improvement to the electoral process, to encourage the reuse of those materials.

The Hon. DON HARWIN: Perhaps the word "opposition" might be too strong. You question the value of postal voting on the basis of security. On the other hand, postal voting is probably the best way to ensure that the aged and the infirmed, who have issues attending either pre-poll centres or polling booths on the day, vote. Do you have any other suggestions for aged or infirmed voters?

Mr MALTBY: I am not questioning the need for postal voting. It is, as you say, the only way to reach people who genuinely live a long way from booths or are aged and infirmed and so forth. What we are targeting here is the increase in postal voting as a method of voting by people who probably do not necessarily fall into that category and are encouraged to apply for it by the postal voting campaigns that have been run. Where I live in the Eastern Suburbs there is particularly high postal voting for religious reasons. The pre-poll centres are available and for many of those people it would be possible to vote pre-poll, for example. But they receive an application that says, "You may vote by post if you cannot attend a booth for religious reasons." So they make an application.

The Hon. DON HARWIN: If political parties did not provide those postal vote applications more generally, the aged and infirmed would have the responsibility of obtaining postal vote applications. Surely what you call a postal vote campaign provides a service to those aged and infirm voters?

Mr MALTBY: I confirm that. Yes, that is true, they do provide a service. It is just that there are many negatives associated with the delivery of that service. It is true that the commission also sends out letters to enrol voters, informing them of their ability to get postal applications. I notice the commission is also talking in its submission about improving the ability to register as general postal voters those people who have reasons to be postal voters continuously.

The Hon. AMANDA FAZIO: Mr Maltby, I want to ask a question about your concerns about public servants contesting State elections. These arrangements have been put in place because

public servants are supposed to be politically impartial when they go about their duties. That is why the provision has been put into most of the legislation that facilitates the employment of public servants. If they want to contest an election, in some cases they have to resign but are automatically reinstated after the election and in other cases they are required to take leave. How would your proposal deal with the issue of public servants, teachers and others being seen to be politically impartial in their employment?

Ms DE LEAU: My understanding is there are slightly different guidelines for Federal elections and State elections, with public sector employees being required to resign under the Commonwealth for a Federal election. In relation to the specific example we gave of public sector teachers at the State election, there was a last minute change to the teachers' handbook. That came about only a matter of a week or so before nominations were to be lodged. We received a letter from the Department of Education and Training confirming that the Crown Solicitor had advised that a public sector employee contesting State elections is not obliged to take leave but there is a preference for public sector employees to take leave. I understand that would be in the guidelines for each relevant department. But this was a point of changing that and forcing teachers in this case to take leave. So there are different guidelines for State and Federal elections. This is a specific example at the State election where the status quo was that the public sector employee was not forced to take leave and this was a last minute change to that. We would argue that the status quo should remain—it is preferable for the employee to take leave but not forced to take leave.

The Hon. AMANDA FAZIO: I understand the difference between Federal and State because it is a constitutional issue under section 44, holding office of profit under the Crown. In terms of impartiality, there is always criticism of teachers in the public education system from certain sectors in the community that teachers are biased, that they teach Marxist curriculum. All sorts of bizarre accusations are made from time to time. In those circumstances would you consider it reasonable that people who have nominated to run as a candidate for a particular political party should not be teaching or not be employed elsewhere in the State public service while they are candidates?

Mr MALTBY: I can see some merit in the statement. There is debate about section 44 of the Australian Constitution as the provisions relate to a different model of the public sector that once applied. The people who are employed in many of the government positions, such as teachers and so forth, are not at a level where they would make a significant impact on government policy. There may be many public sector positions where a person who is a candidate could be influencing people. Of course, most of the people at school are not eligible to vote. There may be political concerns, but I do not think the exercise of public office there would necessarily be a political advantage. It also has to be balanced against the right of people to be able to participate in democracy. If you are a teacher or any other kind of public sector employee who is probably covered by a contract of employment that stipulates what you can do with the public resources that are available to you, as long as you do not breach that contract we do not see any reason why those people should not be allowed or even encouraged to participate in the democracy.

Ms LEE RHIANNON: Earlier today Mr Lavery, a representative of the Liberal Party, gave examples of multiple voting. Have you had experience of this problem? The multiple voting he gave examples of was not fully clear. It appeared to be more where people had voted many times using the same name, not different names. It was a little unclear. I am not reflecting on his evidence, but it was in terms of the examples that had come forward. Have any problems about multiple voting come to your attention?

Mr MALTBY: They have not. I do not think anyone has raised them seriously. I am aware that there is a thread of debate about the question of electoral fraud and the ease by which it may be possible to defraud the vote by multiple voting. Potentially whether people do it in their own name or in the names of people they know to be their political opponents or whatever, I am aware the AEC has done considerable surveys on this and has been unable to satisfy itself that it is a factor. But there are agitation groups within the community who believe it is a serious factor.

The Hon. JENNIFER GARDINER: Mr Maltby, in relation to item 7 in your submission, strengthening legislation to stop false statements during campaigns, you suggest there should be legislated amendments to prohibit false and misleading statements being made about a party or candidate, whether it be by an individual or a media outlet. Do you have a particular model in mind?

Can you point to where an independent election tribunal adjudicates on the truth of political statements?

Mr MALTBY: No, I do not have a specific model in relation to elections. But there are a number of models that apply generally in the community. The Trade Practices Act is one example that provides sanctions against false and misleading conduct in relation to the sale of goods, and the defamation law applies in the case of individuals. It is certainly the case that misleading and untrue malicious material is distributed about political parties. The Greens have been a particular target of it, but there are other parties who have suffered from it. Other than by a response in media outlets, there is very little that the target of such material can do. There is no ability to prosecute either during the campaign or afterwards. We think that is a severe deficiency in the way that elections are conducted. Media outlets in particular have targeted the Greens with untrue material. The only sanctions we have been able to determine are to make complaints to the press council, and that has been totally ineffective in curbing the behaviour. It is a disservice to the voters, not so much to the Greens because people are making their voting intentions on the basis of misleading false information. That is hardly valuable in our democracy.

The Hon. AMANDA FAZIO: On the same topic, Mr Maltby, are you looking to find a mechanism to curb the behaviour during the course of the campaign or are you looking for remedies afterwards, either by prosecuting people or overturning decisions through the Court of Disputed Returns?

Mr MALTBY: I am not sure that we have thought all of that through completely. I take the point that it may be difficult to arrange for an independent adjudication on matters in the heat of an election campaign. I think the possibility of sanction might be a sufficient deterrent if there was some sort of penalty. Amongst the penalties could be a Court of Disputed Returns finding to rehold the election. Obviously that would be less likely perhaps than the possibility of a financial penalty or some other kind of political sanction at that point.

The Hon. AMANDA FAZIO: The instances you referred to took place on election days, apart from the incident at the town hall. In other cases you said that people made comments about the Greens policy that were not true. What is the remedy you are seeking there? Is it for polling officers to have the ability to tell those people to leave the vicinity of the polling booth? You said in one case your people complained to the returning officer at the booths and then called the police but the police were not able to act. What sort of remedy are you looking for in those circumstances?

Mr MALTBY: I think there is probably a deficiency in both the resourcing at the booths and in the training and backup to deal with those circumstances. In many cases the officers at the polling booths are not necessarily sure what their powers or obligations are and when the police come they are unable to say to them, "Here is the relevant part of the Act that controls this kind of behaviour." Then the police are unable to issue cautions or do other things they may be able to do. I think it is primarily a training thing but it may also require legislative backup to strengthen the role of the returning officer or booth officer to control or regulate fair behaviour at booths.

The Hon. AMANDA FAZIO: Were these cases all related to verbal misrepresentations? They did not relate to people handing out misleading brochures?

Ms DE LEAU: There have been examples in the past of misleading brochures. There are certainly some examples from the 2007 State election where another candidate's how-to-vote may be printed in a similar format to something that the Greens would be handing out. It is debatable what impact that has and whether that is actually misleading. We have certainly had examples in the past where it has been misleading and the Greens logo has been used on material for other candidates. We have endeavoured to take action at the time. The specific examples we gave here were verbal misrepresentation about policy as voters were going into the booths. As you are handing out how-to-vote to voters, voters were verbally being given misrepresentations of Greens policy.

The Hon. AMANDA FAZIO: In relation to the brochures that you said were designed to look like Greens material or incorporated the Greens logo, were you able to check with the returning officer whether that was registered material that was allowable to be handed out at the State election?

Ms DE LEAU: We have done that in the past. I am not aware of a specific example from the 2007 State election, but we have sought an injunction in the past to get that material pulled off the booths.

Mr MALTBY: It is worth noting that the Greens also were concerned about the availability of registered material being only in the divisional office or the district offices and not actually at polling booths where the average person or representatives of the parties could inspect it. So it is often difficult to tell whether something has been registered. By the time you have been up to the office and back again—

The Hon. AMANDA FAZIO: The time has passed.

Mr MALTBY: Yes.

The Hon. AMANDA FAZIO: Were you here earlier when Mr Green was talking?

Mr MALTBY: No.

The Hon. AMANDA FAZIO: He raised similar issues about lack of access on the day to registered material and also the issue of it being available in the few days in the run up to the election.

Mr MALTBY: I think there are good reasons, again for voter education, to have that material widely available because it is certainly the case that candidates may often have authorised four or five different pieces of material in relation to preferences, for example, and then distribute a particular one. Having that information available is important for voters to make an informed decision about how they would vote.

CHAIR: Are you happy for your written submission to be included as part of your sworn evidence?

Mr MALTBY: Yes, and we have the media coverage.

Ms DE LEAU: If I may, I will table that extract.

(The witnesses withdrew)

(The Committee adjourned at 12.30 p.m.)