

REPORT OF PROCEEDINGS BEFORE

**JOINT STANDING COMMITTEE ON ELECTORAL
MATTERS**

**INQUIRY INTO ADMINISTRATION OF THE 2011 NSW ELECTION
AND RELATED MATTERS**

At Sydney on Friday 15 June 2012

The Committee met at 10.00 a.m.

PRESENT

The Hon. T. Khan (Chair)

Legislative Council

The Hon. Dr P. R. Phelps
The Hon. P. T. Primrose

Legislative Assembly

Mr A. R. G. Fraser
Mr G. J. Ward

CHAIR: The Joint Standing Committee on Electoral Matters is holding hearings in relation to its inquiry into the administration of the 2011 New South Wales election and its review of the Parliamentary Electorates and Elections Act 1912 and the Election Funding Expenditure and Disclosure Act 1981. In opening the hearing I request everyone to turn off their mobile phones, or at the very least put them on silent, as they can interfere with the Hansard recording equipment. I declare the hearing open.

COLIN ANTHONY BARRY, Electoral Commissioner, NSW Electoral Commission, sworn, and

IAN WILLIAM BRIGHTWELL, Director Information and Technology, NSW Electoral Commission, and

PAUL LOUIS BEEREN, Director Enrolment, NSW Electoral Commission, affirmed and examined:

CHAIR: Thank you for appearing before the Committee today. I understand procedural information was sent to you in relation to the witness and the hearing process. Mr Barry, do you wish to have your submission included as part of your sworn evidence?

Mr BARRY: Yes, I do.

CHAIR: Do you want to make a short opening statement before the commencement of questioning?

Mr BARRY: Yes. I want to make a statement about the conduct of the 2011 New South Wales State election. First of all, in my view the election set a new benchmark for future parliamentary elections in New South Wales. I will make a couple of observations on both the election operations and then later comment on the vision and future directions and some challenges that we face in assisting electors to participate in the democratic process. I will talk a little about the State election. Since the March 2007 State election there were many changes that impacted on the 2011 election. Those changes largely came about from recommendations contained in the Joint Standing Committee on Electoral Matters report into the conduct of the 2007 election.

Those recommendations, together with the Government's response, provided an important springboard to modernise parts of the Parliamentary Electorates and Elections Act, and in so doing was able to obtain, by and large, bipartisan support from all members of the Parliament for those recommendations. This Committee, in particular, I think also has an important role to play in assisting us to provide services to electors. The previous committee set a good benchmark in terms of how we go about that process. The most obvious changes that occurred between 2007 and 2011 centred around fixing up some of the antiquated provisions in the Act. One of the most significant issues identified in the previous committee's recommendation was the need for a wholesale review of the Act. Unfortunately, notwithstanding the fact that the committee recommended that, and indeed the Government in principle agreed to it, time had run out to enable that process to happen before the 2011 election. I am absolutely delighted that that process has now started.

Nevertheless, there were some important amendments made to the Act between 2007 and 2011 and amongst those, of course, there was the automatic enrolment which we called SmartRoll, iVoting for electors in the four categories, online application for postal voting and the processing of postal votes, simplifying some of the voting processes at declared institutions and tightening up some of the requirements for registering electoral material. Those reforms responded to demand from the public to introduce more modern approaches in running elections in the twenty-first century. In addition to the legislative amendments, the commission itself undertook some review of internal processes. One of the things that we did for the first time was to establish a charter of election services. A draft of the charter was sent around to stakeholders. We asked for comment. Comments were received and we finally issued the charter.

I would submit to this Committee that the service charter is an important document. It is an important document in my mind from the point of view of the Committee being able to review the appropriateness of the service commitments that we put in that document, the categories of the stakeholders who were identified and whether in your view the commission met those service standards that were established. In addition to the service commitments, the commission undertook more research and analysis around trends in polling places. I am absolutely pleased to be able to say that in the 25 years that I have been involved in electoral administration this was the first election that I was not inundated with complaints about queues at polling places. Whether I am working in a parallel universe I do not know. Some of you may have some different views. I do think that we actually did a good job in terms of reducing queues at polling places—we will never eliminate them but we certainly did a lot better than what we did in 2007.

We provided service to key stakeholders in the run-up to the election and during the course of the election. In the case of registered political parties we provided briefings on how we would conduct the election. We did that in December 2010. This was an important part of the process to ensure that all registered parties understood the requirements particularly of new legislation that was introduced late in the Parliament. In addition to registered political parties, the commission and the Election Funding Authority conducted numerous

candidate seminars to explain to candidates and prospective candidates those various changes in laws. Again we see that as an important part of the process. It was interesting because for the first time we did a special briefing for the media in Parliament House, Sydney. I was quite surprised to find the number of young journalists whose knowledge of the election process was somewhat less than what one would perhaps anticipate.

The other observation that I would make about the media is that 20 years ago media outlets often employed researchers. With the 24-hour news cycle those resources do not exist and journalists we found were often left wanting in terms of how do they get research information and background material. We did identify a media liaison person at the commission whose job it was to support the media in unearthing factual information. We found that worked well and the feedback was positive. For the first time we used Twitter and Facebook and, notwithstanding the above comments and our enthusiasm to embrace social media as a means of communicating with the younger set of electors, the traditional processes of communicating with the public through television, radio and press were also maintained.

We did wind back some of the television advertising for this election and used that money to engage in paid internet advertising and to beef up the radio advertising. For the very first time we established online training for all of our election officials and returning officers right through to people working in polling offices. That ensured a consistent approach. There was a test they had to undertake in order to get through the gate. This proved very successful. The online training and the quizzes that we provide to those people is something we will continue to do.

The election outcome was at a very high level from my point of view. The observations I would make are: there was a change of Government at the 2011 election; from our point of view there were no successful court challenges; there were no requests for any recounts in any of the seats; and for the first time in my experience there was no critical media comment about the Electoral Commission's conduct of the election. Whilst we always receive complaints from candidates and the public about various parts of the process, often they are not complaints but people seeking information or clarification about some of the procedures. We established a feedback icon on our website so people could directly ask questions or make comment about any aspect of the election. I am not aware of any complaints regarding the timeliness or accuracy of the information we provided to people.

The voter turnout was 92.6 per cent and the informal voting was 3.2 per cent; those numbers are acceptable and within the normal bands of voter turnout and formality voting in New South Wales. There are people who are Australian citizens entitled to be on the roll but for one or other reason have decided to avoid enrolling. Unfortunately the SmartRoll legislation which came into effect late in the process was not proclaimed early enough for us to exploit the benefits of that legislation. I will say a little bit about the SmartRoll process in the course of this inquiry. We can be confident that the automatic enrolment or SmartRoll has now commenced operation in a full-blown capacity. We are communicating with 10,000 people a week in the run-up to the local government elections. I will talk about SmartRoll in the local government elections in a minute.

I want to point out to the Committee some visions and challenges. One of the most encouraging things about the operation of this joint standing committee is that it has provided an excellent venue for the commission to raise aspirations on how New South Wales can establish a modern electoral and enrolment system that will serve the constituents of the twenty-first century. I am keen to work with this Committee to capitalise on the momentum that has been established by the previous committee. I want to talk about a number of important strategic matters to assist the Committee to develop a vision and not just focus on the past elections. The first issue I would like to point out and address is the issue of future enrolment. The traditional processes that have been in place since the nineteenth century have served us well for over 200 years. The challenge we now face is that younger people, and to some extent post-war baby boomers, are becoming less and less inclined to use nineteenth century processes when in other parts of their business they can conduct their affairs through more modern channels of communication.

We know that in New South Wales there are approximately in 500,000 to 600,000 electors who change address every year. If you multiply that by four years there are approximately 2.5 million electors in New South Wales who change address between State elections. In the past these people have had to fill out a form and send it to the Australian Electoral Commission in order to have their enrolment changes effected. There is evidence of an increasing number of these electors not getting around to updating their enrolment. Fortunately for us the automatic enrolment provisions have now given us the ability to automatically change these people's enrolment address where we are satisfied they live at another address. The SmartRoll has also enabled us to eat into the missing electors, of which there are a considerable number in New South Wales. By the September 2012 local

government elections we will have newly enrolled, from the missing, approximately 150,000 electors. As well as that we will have changed the address of approximately 400,000 people. This is hard evidence of the success of the project. I have said in previous forums that this is the most significant piece of electoral legislation that has been introduced into any parliament in New South Wales. New South Wales now has modern provisions to enable the electoral roll to be as accurate as one could possibly anticipate.

I want to talk about the challenging environment we face. We know that young people are not engaged with the election process to the extent that we would hope. We know that they want more choices. They want more choices in terms of how they vote and when they vote. We know from the surveys that we have undertaken with young people when we have SmartRolled them they actually think this was the way it worked anyway. They are surprised to find out that they had to fill out a form in the past. The challenge that we face in the future is that as the population ages and the bulk of electors get to the end of their working life over the next 10 to 20 years the younger electors coming through are going to demand from legislators that the legislation keep up with their expectations on how enrolment and voting will work. The nineteenth century approach served us well but we have to move on into the future.

The other point I wanted to raise is that New South Wales is already addressing this. We have enabling legislation for SmartRoll to manage the roll and the second good news is that we are using iVote to assist people in a number of specific categories who would otherwise find it difficult to vote. The overwhelming demands from those people who were interstate and overseas at the last State election, some 30,000, that used iVote are evidence of that. An expansion of iVote has the potential to greatly improve enfranchising young electors and addressing growing administrative problems associated with early voting channels and, in particular, absentee voting. iVote could be extended for use by electors entitled to a pre-poll, postal or absent vote and to fully integrate the voting process with the counting process.

I want to talk about the Clarence by-election that we conducted last year where iVote was used for the first time at a by-election. We found that the number of electors who lived more than 20 kilometres from a polling place doubled compared with the State election. iVote proved very popular with those electors. The Clarence district experienced a growth in electors using iVote of more than 230 per cent, with growth of 760 per cent for those electors living more than 20 kilometres from their nearest polling place. It was also pleasing to see that over 70 per cent of electors with vision impairment returned from the 2011 State election at Clarence to use iVote.

Another challenge we face in the future is that the public are demanding more information about candidates. One of the things we saw during the last election, in particular those who iVoted, was that they wanted to click on the candidate's name and get a how-to-vote card or find out details about the candidate. It is something that this Committee could look at in terms of a vision for the future. One of the other challenges that I have to raise with the Committee is the availability of suitable buildings to use as polling places on election day. We know there is an increasing demand from people who are less mobile than they once were to have polling places that are more accessible for people with a disability.

Unfortunately, many of the buildings that the commission uses are not suitable for people with a disability. I will recommend to the Committee that the legislation be changed to pick up a provision that exists in the Victorian elections legislation that requires the owner of any building who receives any benefit from the State to be required to make their building—that is, a church hall, a private school or a council building—available to the commission for use on election day and that the commission reimburse the owner of the building for the direct costs associated with heating, lighting, power and cleaning. The commission found that in the 2011 State election quite a number of organisations were gouging—that is the only word I can use—with regard to the charges they wanted to impose for the use of their building.

Election day multi-voting is an old chestnut that is raised at every joint standing committee meeting held around the country. Electoral authorities have been unable to dispel the perception that widespread multi-voting occurs on election day because of the limitation of mark-off using pencils and paper rolls. As we know, it is currently possible for an elector to vote at many polling places in an electorate on election day. Although there are no significant cases and all but one or two cases are explained by such things as elderly people getting a postal vote and being taken by a good neighbour to vote on election day, of the handful of people who have been identified as multi-voters none has been successfully prosecuted through the courts.

We believe that smartphone technology may offer a solution to this issue. We currently use electronic mark-off with laptops at pre-poll voting. However, the cost of providing election officials at polling places with

electronic devices is prohibitive. The cost could be addressed by using smartphone devices already owned by election officials that can be configured with our electronic mark-off system. That is, they can use their smartphone to access a website where they can mark the roll. That mark-off can then be sent to a central database. The same technology can be used to perform statewide hook-ups, to register iVoters in polling places for absentee votes and also to allow results from polling places on election night to be returned more rapidly. As an added advantage, it would reduce paper usage by some two million A4 pages.

We undertook an analysis of how SmartRoll could assist in improving the roll for the Clarence by-election. We optimised the change of address or transfer enrolments using Roads and Traffic Authority data with a focus on those electors who had moved into or out of Clarence. We conducted for the first time in Australia an enrolment of eligible but unenrolled new electors using Roads and Traffic Authority data but augmented with New South Wales Registry of Births, Deaths and Marriages data. We are fortunate that we have access to the 100 years of births data in New South Wales so that we can check to establish whether a person was born in New South Wales and whether they are an Australian citizen. We also have access to other information through the Department of Immigration and Multicultural and Indigenous Affairs to establish whether a person has recently become an Australian citizen.

We implemented, again for the first time, both enrolment transfer and enrolment and voting on the day. Committee members will be aware that the legislation enabled people at the last State election who had the right proof of identity to turn up and enrol on the spot and to vote. However, we did not allow people to transfer enrolment and vote on the day. With an increase in the enrolment in Clarence of 3.7 per cent, or 1,874 electors, we decided to expand this campaign in the run-up to the local government elections to get a more accurate roll. Using careful analysis and sound data-matching methodologies, we have been able to increase the weekly rate of enrolling using SmartRoll to some 10,000 a week. That is 10,000 a week are using SmartRoll to have their enrolment changed or to be put on the roll for the first time. Since February 2012—a little more than four months—we have enrolled 130,000 new electors and hundreds of thousands have had their enrolment transfer affected.

Increasing participation in electoral events is significantly dependent on three factors: improving enrolment, increasing attendance and increasing the validity of votes. At the Clarence by-election, of those enrolled using SmartRoll, 54 per cent participated in the by-election and participation by those enrolled increased by 77 per cent. Overall participation of electors at the by-election was 87 per cent. With the community's rapidly increasing awareness of SmartRoll, it is expected that these figures will improve in a relative sense for local government elections or possibly reduce because of the traditional greater disengagement that people undertake with respect to local government elections. I thank the Committee for the opportunity to make a presentation.

CHAIR: I refer to the upper House—and I declare an interest. Do you see a need for Court of Disputed Returns processes to be modernised in any way? Before you address that, you referred to the informal vote in a general sense. What was the informal vote in the upper House?

Mr BARRY: I cannot provide that figure off the top of my head, but I can take that question on notice.

Mr BRIGHTWELL: It was similar to last time; there was very little change.

Mr ANDREW FRASER: What is your opinion of having an election period rather than an election day? I spent a bit of time at the pre-polling station at the last election and I noticed people making excuses about being away and people being knocked back who were going to be away and being told that there was a polling booth where they would be. I know of two people who did not vote because they were in meetings or were travelling and did not have time to vote. If there were an election period, they would have an opportunity to vote and would be far more comfortable doing so. I also suggest that the queues would be shorter. I had to wait in a queue for 20 minutes at Coffs Harbour.

Mr BARRY: You have raised an extremely challenging issue for this Committee and particularly for your party administrations. We are seeing the community demanding more and more access to voting opportunities at a time that suits them. We are moving from the nineteenth century, when people went along on a Saturday and voted. Over time parliaments have introduced postal voting in recognition of the fact that not everyone could vote on a Saturday. They have also introduced pre-poll voting in recognition that even postal voting will not work for some people. Parliaments have tried to make voting more accessible, but with a whole raft of criteria. As you say, people must indicate why they need a pre-poll vote. Parliaments have also

introduced absentee voting to accommodate people's movements on election day. The New South Wales Parliament introduced iVoting to accommodate four categories of people. Again, it is trying to accommodate people.

I think what we are seeing by stealth is a move to a voting period. I do not think we want to do away with the notion that there is an election day when the vast majority of people turn up to vote. However, I do think it is to some extent cute that we have these categories of people who turn up to pre-poll vote. They are required to go through various categories and then declare orally the category into which they fall. In my view, they are really declaring that they cannot get to a polling place on election day. If it were changed to that it would be much simpler for everybody.

Mr ANDREW FRASER: So, rather than have a voting period you are saying that the criteria should be changed.

Mr BARRY: I would say make the criteria represent the reality. And the reality is what people are declaring. In all of those criteria they are actually declaring that they cannot get to a polling place on election day.

Mr ANDREW FRASER: Quite often a lot of people do not want to turn up on election day, especially those who are getting a bit older, because they may have to queue. And when you have a pre-poll booth manned, as you do, and we as political parties do exactly the same, surely a voting period from the time that the pre-poll opened would be just as simple. Rather than, yet again, having someone making what I would suggest is a false declaration.

Mr BARRY: I think if we change the declaration and get the declaration right it will work. The declaration could be either, "I cannot get to a polling place on election day" or, "It is inconvenient for me to get to a polling place", to accommodate people who might be elderly and so forth.

Mr ANDREW FRASER: People have work and sport and everything else as well and anyone who has ever handed out at a polling booth will tell you that at five minutes to six the rush to the booth from people who have been attending either their sport or their children's sport is huge.

Mr BARRY: The difficulty we are facing is that what we do not want to do, in my view, is to start getting millions of people turning up to pre-poll voting locations in the two-week period, because we simply could not handle them. What we do not want to end up with is having something like a whole network of pre-poll voting facilities, akin to what we have on election day, with polling places, just to accommodate the large numbers. But I certainly agree that we should tighten up the criteria. And when I say "tighten", we should make it reflect the reality of people's circumstances and that should be sufficient.

I wanted to come back to the Chair's question about the processes of Court of Disputed Returns for the upper House. And in fact, it is not just the upper House, it reflects the lower House itself. One of the things when one is in the midst of these frustrating challenges that end up nowhere is that on the spur of the moment you madly think, "This is a crazy system and something has got to be better". I commissioned Professor Graeme Orr from the university of Queensland to write a paper for me on modernising courts of disputed returns and you will have that in our submission in the review of the Act. When you allow enough time to get over the frustration and the emotion of the immediate frivolous court challenge that you are dealing with and you can reflect on it, you think that, in actual fact, there probably is not much better than what we have got. Maybe the Committee has some greater insight into it than I have. But I think it is probably the least worst option.

CHAIR: Do we know if Mr Rattner—or whatever his name is—has been prosecuted?

Mr BARRY: The Police declared that Mr Rattner had not breached any New South Wales laws—it is Castle, not Rattner.

Mr ANDREW FRASER: I have a further question in relation to smart enrolment and automatic enrolment. When somebody is automatically enrolled, you write and advise them that they have been enrolled, is that correct?

Mr BARRY: Yes.

Mr ANDREW FRASER: If you are writing and advising them that they have been enrolled, do you advise them of a voter number or an enrolment number?

Mr BEEREN: Yes, there is a number that attaches to that transaction.

Mr ANDREW FRASER: On that basis, why cannot we have some form of voter identification, where a card is taken and presented? I have presented two pieces of legislation to Parliament over the years—knocked back, for all the reasons under the sun. I am one of those who probably disagree with you, Mr Barry, in relation to the amount of fraud. I draw your attention to the Mulgoa election in 1995 or 1999 where a former leader of The Nationals said that that result was basically decided on two busloads of votes. And—surprise, surprise—there happened to be a fire in the electoral office not long after that. So I do believe in voter fraud and, whilst I listened intently in relation to ways of getting around it or ways of enrolling people, I still believe that a voter identification card is something that if you are already writing and advising people that they are enrolled and they do have an enrolment number, surely a card that could be kept in a wallet could be supplied to all voters.

Mr BARRY: I do not have any philosophical or administrative difficulty with the concept of issuing people with a voter card. You might recall that when the Australia Card came up in the 1980s there were lots of objections to a universal proof-of-identity card. To some extent, we send people a communication but it does not have on it anything other than a name and an address. It does not have photographic identification, if you are going to go down the path of requiring people to provide proof of identity—and I think that is what you are probably leading towards.

The Hon. Dr PETER PHELPS: There are two issues that have been conflated here and that is multiple voting by an individual and impersonation by another individual. The production of identification goes all the way, effectively, to eliminating claims of multiple voting by a single individual and goes some way towards reducing the chances of impersonation because it would require the active transfer of a piece of identification from one person to another. Is there any logistical problem that you would see, as far as commission officers are concerned, with requiring, if you like, a fourth question to the magic three questions, being: Can you please provide identification to verify who you are?

Mr BARRY: To ask that question of people, it itself is not an administrative impediment. The challenge would be what sort of identification would you be seeking to require?

The Hon. Dr PETER PHELPS: If we allowed the Commissioner, for example, to set forms of accepted identification?

Mr BARRY: That would be possible. There would have to be some sort of analysis. It is the old bell curve. The vast majority are going to fit within the middle. It is what happens when you get to the edges—and you always get to infinity. There are going to be people in the community who currently do not have some form of acceptable proof of identity.

CHAIR: Or do not bring their wallet on the day.

Mr BARRY: Or do not bring their wallet.

The Hon. PETER PRIMROSE: Or falsify their identity.

Mr BARRY: Putting aside the ones who might be trying to do something scurrilous, the cultural change would be quite a challenge.

Mr ANDREW FRASER: Further to that—

CHAIR: I do not want this Committee to be only Coalition members asking questions. I think Mr Primrose is entitled to a go, because I am concerned about the time and I do not want to get to the end and find that he has not had the opportunity.

The Hon. PETER PRIMROSE: My comment is that I do not think it is appropriate—and we have had this discussion before—to impose an additional cost and burden on citizens until you identify that there is actually mischief to be dealt with. You have said before today that you do not believe that there is a mischief, to an extent, in relation to the topic we are just talking about.

Mr BARRY: To be frank about this, at the end of the election process we go through a check of where we have multiple marks on the roll. So one component of it is where people appear to have voted more than once. So we have got evidence about that and I explained that and that has been explained in other forums and other committees. Yes, there are fewer than a handful of people who appear to have voted more than twice—people who might try to vote three, four or five times. We did have a person—and I cannot remember whether it was the 2007 or the 2011 election, it may have been the 2007 election—who turned up at about seven or eight polling places, one person, and had their name marked off. So we had the evidence that this happened.

We sent the police around and they came back and said, "The person is not mentally balanced". We took it further to the Crown Solicitor and the Crown Solicitor said, "You are not going to be able to get a successful prosecution, because all you can prove, at best, is that the person went and got their name marked off the roll but that does not mean they voted". So the law would have to be changed that it was illegal to have your name marked off a roll more than once, because having your name marked off the roll is not the same as voting. That was an interesting comment from the Crown Solicitor on it.

CHAIR: And you had to have gained the admission from the person that they are the one that went to the multiple sites?

Mr BARRY: Absolutely. This is fraught with a lot of issues. The other point is that we do not have any evidence around impersonation.

The Hon. Dr PETER PHELPS: But you could never get any evidence of impersonation. For example, I could go to Hornsby electorate if my brother was overseas and vote in my brother's name, knowing his full name and his date of birth. Even presuming I was asked his date of birth I would be able to say, "Yes, I am voting for my brother and he lives at this address". But if I was required by electoral officials to prove that I was that person I would be unable to, and that would be an immediate impediment to my impersonation.

Mr BARRY: Agreed.

The Hon. PETER PRIMROSE: And you would be in the queue of people over in the corner who are busy there trying to work out how they can provide—

The Hon. Dr PETER PHELPS: Actually I would not even attempt it because I would know that I could not meet the requirement of an act which required the production of identification.

The Hon. PETER PRIMROSE: I think this may be a discussion for a later time as well. Can I ask you, on another topic, what are the challenges and issues that you see in relation to voting at declared institutions? Are there any matters that have been brought to your attention, are there any concerns in relation to ensuring that anyone who wishes to vote at a declared institution is able to do so?

Mr BARRY: Declared institutions are always a challenge for us on a couple of fronts. Number one: There is no central register of declared institutions in New South Wales or in Victoria that I can comment on. Consequently, we are always challenged by declared institutions growing like mushrooms. They come up and we have got to in some way determine that they exist. The second challenge that we face is that we always have to approach the administration of the institution to establish whether in fact the residents are capable of voting—there is a judgement there. Secondly, we have to have the agreement of the administration that we can come into the place and conduct voting.

I have to say by and large we do not get much push back. But at the end of the day if the people who are in charge of the organisation say, "Mrs Smith is very ill today and I do not think it would be appropriate if you go to her bedside", we take their advice. No information has come to us of any undue influence by the administration of institutions, inappropriate behaviour of scrutineers or the like. I am not naive enough to believe that there would not be interaction between election officials and the voter. Mrs Smith might say, "I want to vote Liberal. Who do I vote for to vote Liberal?" Of course they are going to say, "Well, there is the Liberal candidate". Or Mrs Smith says, "I want to vote Labor", and they say, "Here is the Labor candidate". If a scrutineer is there a scrutineer may very well form a view the election official is helping them vote. To some extent they are, but that is their job.

The Hon. Dr PETER PHELPS: They have to do that with blind people anyway.

Mr BARRY: They do.

The Hon. PETER PRIMROSE: Are there any issues then in relation to declared institutions that you believe we should be looking at making recommendations on, such as identification?

Mr BARRY: Identification of institutions would certainly be a help so that we know where they are.

The Hon. Dr PETER PHELPS: There were some reports in the press from, I believe, The Greens and the Sex Party about those parties being asked to remove their posters when there were confluents on polling places which were owned by religious institutions. Do you have any further information on that? Were those reports correct, that they were asked to remove those posters, and is there a need for some sort of legislative change or perhaps a better assessment by the Australian Electoral Commission of institutions?

Mr BARRY: The report was correct—

The Hon. Dr PETER PHELPS: For the Sex Party or for The Greens?

Mr BARRY: It was the Sex Party. The report was correct; it was one polling place. In my submission regarding the review of the Act I think I cover that point, that that is totally, in my view, inappropriately interfering with the democratic process and it is not for owners of buildings to declare whether or not candidates are—

The Hon. Dr PETER PHELPS: I think we agree with that, but what is the solution? Is it just a mandatory legislative requirement that there is no interference in the political whatever it is?

Mr BARRY: I would think so.

Mr GARETH WARD: Firstly, Commissioner, I would like to commend you for engaging in Facebook and Twitter. I think that is a really good move. I notice you did not update your status before coming here today.

Mr BARRY: Have we still got followers and friends?

Mr GARETH WARD: I am still waiting for your friend request to be approved.

Mr ANDREW FRASER: He hasn't got any friends.

Mr GARETH WARD: Pot calls kettle black. In relation to voter identification—I know we have had a discussion about this—you mentioned there was only a handful of people who may have voted twice. How does the commission identify that that has actually occurred? Is it random or is it more exact?

Mr BARRY: What I said was a handful of people who appear to have voted more than twice. There are hundreds who appear to have voted at least twice, and they are typically accounted for as being elderly people or, for example, Colin Anthony Barry has been marked off the roll when in fact it was Colin Bernard Barry. There are two polling places and the same person has been marked off the roll but in fact they are two separate people and when we scan the rolls it appears as though Colin Anthony Barry has voted twice. Then you look at the name above and you see that Colin Bernard Barry appears to be a non-voter.

Mr GARETH WARD: Is that process, though, actuarial or is it by sort of haphazard circumstance?

Mr BARRY: No, it is methodical.

The Hon. Dr PETER PHELPS: You scan every roll, do you not?

Mr BARRY: Yes.

The Hon. Dr PETER PHELPS: It is computerised.

Mr BARRY: And every one of those instances is actually checked by people.

Mr GARETH WARD: Further to that, you talked before about the bell curve analogy. Do you not think that the democratic imperative of ensuring the sanctity—for want of a better word—of the voting process, the integrity of the process, is more important than the fact that someone might forget their wallet, for instance?

CHAIR: What deny somebody the right to vote?

Mr GARETH WARD: No. Just to clarify: I am not talking about denying someone the right to vote; I am talking about criteria which would strengthen the process.

Mr BARRY: I think what the Committee needs to do—if I can suggest this—is to go through a bit of a whiteboard exercise and run through these things, not sort of like we are here today, but you need to go through and start to work it through: You can have a New South Wales RTA photographic proof of identity—you start to list all the various things that you might accept. It is when you then start to deal with the bell curve at the end of it, what arrangements are you going to contemplate for people who simply do not have something, or, as the Chair has suggested, they have turned up to the polling place, and, dare I say, they have waited in a queue for 10 or 15 minutes, and all of a sudden they have discovered they had to have their drivers licence with them which they have left at home.

Mr GARETH WARD: It begs the further question: At the moment I think we now require some form of identification to enrol. So there are two separate standards: one for when you enrol and one when you go to vote.

Mr BARRY: The one when you enrol is a background check that we undertake. For example, if we are going to use the automatic enrolment process to put a person on the roll for the first time—and Paul can talk more particularly about it—we check to see if that person was born in New South Wales. So to some extent there is a background check that we have, but when the person turns up to vote on election day the challenge I think for the Committee is to come up with some sort of a scheme that you think is going to work, and, as I said, the bell curve for the vast majority of people having a drivers licence will cut the mustard for them; but it is the ones that get to the edge that you are either going to have to accept and say that is fine but we have to have some other arrangements for those people. I am not personally against the idea of having any sort of proof of identity to vote.

CHAIR: Thank you for appearing before the Committee, although I note you will be returning to this hearing at 4.00 p.m. today. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Are you happy to provide a written reply to any additional questions the Committee may have?

Mr BARRY: Most definitely.

(The witnesses withdrew)

VANESSA TEAGUE, Honorary Fellow, University of Melbourne, and

ROLAND WEN, Research Fellow, University of New South Wales, affirmed and examined:

CHAIR: Welcome, Dr Teague and Dr Wen. I thank you both for appearing before the Committee to give evidence today. Before we proceed, do either of you have any questions concerning the procedural information in relation to witnesses and the hearing process that was sent to you?

DR TEAGUE: No.

DR WEN: No.

CHAIR: In what capacity are you appearing before the Committee?

DR TEAGUE: I am appearing on behalf of the Computing Research and Education Association of Australasia.

DR WEN: I am appearing also on behalf of the Computing Research and Education Association of Australasia.

CHAIR: Would one or both of you like to make an opening statement?

DR TEAGUE: Roland and I are both computer science researchers who have taken a particular interest in computer security issues, particularly those associated with electronic voting. We are both appearing today for the Computing Research and Education Association of Australasia, which is a collection of academic university computer science departments. We had a lot of concerns about the iVote project. The two issues of greatest concern to us were its verifiability and its transparency. I will be talking about verifiability, which refers to the evidence that a particular election outcome was correct—meaning that all the votes were correctly recorded, transmitted and printed. My colleague Roland Wen will be talking about transparency, which refers to the openness of the process and the system's technical details.

I do not believe that any internet voting protocol could provide a degree of verifiability and security that would be comparable to postal voting for people who could fill in their own postal vote. I do think there is an argument for voters who would otherwise have to trust a person to fill in their piece of paper, but only if those voters are completely and truthfully informed of the system's security issues and the limitations on its privacy and verifiability. Verifiability is obviously a matter of crucial importance for the integrity of the election because a system that does not provide good evidence that it got the correct answers is a system that could potentially be manipulated. I am not talking about coercion, although that is important too; I am talking about somebody actually altering the digital record of somebody else's vote to produce a different set of votes and hence try to influence the outcome of the election.

This is particularly concerning in this case because it was known that iVote had outstanding security vulnerabilities at the time of the election. I disputed the verifiability of this system before I knew that it had demonstrably misrecorded 43 ballots but I hope that fact focuses attention on what, to me, has always been the main point—namely, that the other 46,000 and something do not come with any solid evidence that they correctly recorded, transferred and printed out eligible voters' votes. If a disgruntled losing candidate had challenged the iVote results and demanded evidence that they deserved to lose, that evidence would not have existed. iVote gave each voter a receipt number after voting, which they could go back and query and see whether they got a matching receipt afterwards.

The iVote website stated during the election that getting a matching receipt number confirmed there had been no tampering to the vote. Similar language appears in the security overview white paper on the Everyone Counts website, which says that their protocol prevents alteration of the ballot. The Electoral Commission of NSW report to this inquire still refers to iVote providing an independently verifiable vote, but in all three cases that claim is incorrect. In fact, if the iVote vote was manipulated either at the voter's computer or upon arrival at the server or just before printing, the receipt mechanism would have done nothing to detect or counter that manipulation.

Mr Radcliffe, who now works for Everyone Counts, wrote in his submission that they would be able to address these issues in future versions using end-to-end verifiable election protocols. I probably have more publications on end-to-end verifiable election protocols for preferential elections than anybody else in the world. I do not believe that it would be feasible at this scale and I do not believe that it would completely solve all of the issues, although we can talk about that later if you are interested. But there is no need to take my word for it; please ask him to provide a complete and transparent proposed protocol which can be publicly evaluated well in advance of the next election. That links us nicely to transparency.

DR WEN: Dr Teague talked about verifiability problems with iVote and I will talk about transparency problems. I have three points. One, transparency is vital to integrity and public trust in secret ballot elections. Two, iVote has almost no transparency. Three is the issue of how transparency can be achieved in e-voting. First of all, transparency is vital to integrity and public trust in secret ballot elections where there is immense potential for things to go wrong and for the wrong candidates to get elected. To counter this we have transparency in paper-based elections which enables this rigorous, open and inclusive scrutiny to detect when things do go wrong. But internet and computers are by nature not transparent. In addition, they are notorious for having all these software errors and security vulnerabilities. So, really, measures to ensure transparency and scrutiny are even more vital for internet voting.

However, iVote has almost no transparency and so it cannot be adequately scrutinised. Very little information about iVote has been released. Two audit reports revealed serious integrity and security issues and critical incidents that occurred during the election, but these brief reports contained only superficial details. Furthermore, there is no way to verify if any of the identified problems with the system were fixed properly or if other serious problems remain undetected. This is in large part because the iVote system is what is called closed source; it is not an open source system. This means that the source code is only provided for review to selected people under a highly onerous non-disclosure agreement. This arrangement goes completely against the principles and practices of election transparency and scrutiny. We have seen that a similar lack of transparency and scrutiny in other e-voting systems has led to catastrophic failure in overseas elections. There are lots of examples but a recent example is the Florida elections in March where failings in the e-voting software resulted in two losing candidates being announced as the winners.

To address these issues there are international standards for how transparency can be achieved in e-voting; for example, the Council of Europe's recommendations. A good example of transparency practice is Norway's internet voting system, which was first used last year. They published extensive material about the system, including the source code. This transparency allowed independent, widespread scrutiny by experts and the public. The Victorian Electoral Commission plans to adopt similar transparency and scrutiny measures for its e-voting system. With iVote what has happened is New South Wales has really fallen behind other jurisdictions by exposing its elections to unnecessary risk. To reduce the chance of catastrophic failure, New South Wales must set clear verifiability, transparency and scrutiny requirements well in advance of considering whether to use internet voting again.

Mr GARETH WARD: When I was listening to some of your comments it reminded me of that movie *Man of the Year*, which I am sure you have seen.

DR TEAGUE: Is that the one where the person gets to cast the last vote?

Mr GARETH WARD: The person gets elected on the basis of computer voting, that is right. You talked about iVote being a closed source program. Would opening up the source code to public scrutiny not carry the risk that any vulnerability might be exposed by the discoverer rather than reported to the Electoral Commission?

DR TEAGUE: Let me answer that. It would certainly be naive to say that making an insecure system open source instantly makes it secure. Nobody is claiming that would be the case. What we are saying is that keeping the source code of an insecure system secret does not make it any more secure. It is really not that hard to figure out the properties of a system by interacting with it without necessarily seeing the source code. In particular, there are things that we can tell you about iVote. We have never seen the source code, but we have been able to figure things out about it by pretending to be a voter and looking at what we get. Often hackers will attack something without having the source code.

The Hon. Dr PETER PHELPS: But it is easier for them to do it with the source code, is it not?

DR TEAGUE: It is probably faster for them to do with the source code, yes.

Mr GARETH WARD: If there was to be a review of the way the source code works to ensure its integrity, who would be best placed to do that?

DR TEAGUE: I still think making the source code public is the best way to go. I understand that that means that more people get to see it, but if it is insecure in the first place and it is released two weeks before the election it is not going to suddenly become secure and that is not what I am saying. What I am saying is there should be total transparency about the project starting months and months before the project, allowing extensive review by a very wide collection of people with the objective that by the time it comes to the election you have patched all the bugs that any reasonable person could find in the code.

Mr GARETH WARD: Would you mind providing some comment on perhaps some parallels between iVote and what the Victorian Electoral Commission are developing in relation to its supervised electronic voting system?

DR TEAGUE: Dr Wen and I are both working on that system, and it too is going to be completely openly readable source code. It is going to be developed in the context of exactly what I just said: A very transparent process that will be open over a long period of time with the expectation that that will provide an extensive period for outside review, and with the expectation that the Electoral Commission will find out about as many bugs as possible because there will be enough time for a large number of different people to scrutinise the source code.

Mr GARETH WARD: When I was on the student union at Wollongong I actually introduced Secure Vote.

The Hon. Dr PETER PHELPS: So that's how you won.

Mr GARETH WARD: It was one of the many ways that I won. How can electorate voting ever be truly trusted over the paper system? I believe that there is a great call for iVote, and I think that we can always talk about improving its integrity, but can a system of electronic voting ever be truly trusted?

DR TEAGUE: I agree totally. In fact, I just said that five minutes ago. I do not believe that any internet voting protocol can provide a degree of verifiability and security that is comparable to postal voting for people who can fill in their own postal vote. I absolutely do not think that we should be running internet voting for people who could fill in their own postal vote. I think it is an absolute last resort only for people who would otherwise have to depend on another person. And even then I do not think it should be presented as a perfect, secure and reliable alternative.

It should be presented as an alternative set of trust assumptions. We should be saying to the vision impaired and other disabled voters: You could trust a person, as you traditionally do, or you could trust this computer system which means you are trusting some software and some hardware and some human procedures and a whole complicated system that might work in the way that you hope, or might malfunction. Here is the most transparent technical and accurate information we can give you about it. Now you choose whether you want to trust a person or whether you want to trust a system.

The Hon. PETER PRIMROSE: If you were us this afternoon and the Electoral Commissioner was appearing before us, which he will be, what are three questions that you would put to him in relation to this matter?

DR TEAGUE: I would ask him what degree of evidence the system provides that it got the right answers. That is my first question. The second question I would ask is: What was the process for selecting this particular technology for these sets of electors? In other words, what consideration was given to alternative, more old-fashioned options—such as, delivering blank ballots over the internet that could be filled in and posted back, or putting computers in polling places, or various other less glamorous but more obviously verifiable methods of using communications, or computing infrastructure to help people cast a vote? That is only two questions. A third question—

The Hon. PETER PRIMROSE: Dr Wen maybe has a question.

DR WEN: Something that is really interesting is that there is an iVote standard which apparently describes what sort of requirements were set that iVote is supposed to meet, but the problem is that this is actually secret and has not been released. We have requested it but it was rejected.

The Hon. PETER PRIMROSE: I can see where your question might be going.

DR WEN: We would normally have a public debate, but you cannot have a well-informed public debate without this basic information. So there has been an immense transparency problem where nothing has been released and we cannot even begin to discuss it properly, so we need this information to begin this discussion.

The Hon. PETER PRIMROSE: In relation to the Victorians, would it benefit us if the Committee so wished to actually talk to someone in Victoria about where they are up to?

Mr Gareth Ward: Or another jurisdiction.

DR WEN: Absolutely.

The Hon. PETER PRIMROSE: Who else would you recommend?

DR WEN: In fact, the Electoral Council of Australia is holding a workshop at the end of July, hosted by the Victorian Electoral Commission [VEC]. That is a good opportunity to find out what is going on, and I am sure everyone who is interested is welcome.

The Hon. Dr PETER PHELPS: On a different issue about releasing the code as open source, do you come into the issue of proprietary control over it? You do not want it basically for people to just steal the proprietary rights in the development of that code.

DR TEAGUE: I think that is why it is secret in the first place.

The Hon. Dr PETER PHELPS: Rather than go totally open source and totally secret, is there a happy medium somewhere along the line where it can be independently tested, verified, basically you try to break it, getting maybe a limited group of people who are professionals to try to break it, rather than leave it to anonymous and his friends to do so?

DR WEN: There are a couple of things. One is that open source, making the source code public does not mean that someone else is allowed to steal the code and use it however they want. You can still put a licence on it that prevents that sort of thing.

The Hon. Dr PETER PHELPS: I am old enough to remember the origins of BASIC and how that was not stolen but borrowed extensively.

DR WEN: With something like elections, I think it is important that we do build, like, that is what has happened with paper-based elections. We learn from how things have worked elsewhere, how problems have occurred and been solved. We want to do the same thing with electronic voting systems, and you can only do that if this is all open and people can analyse it. In terms of scrutiny, it is important to have both. We want to have a formal scrutiny process that is done by say security firms and so forth that the Electoral Commission engages, but it is important that it is also possible for any person or any candidate to appoint a scrutineer who can examine it. It is like what currently happens. So it is not just this security firm that is paid to do it and actually has to sign a non-disclosure agreement [NDA] and cannot reveal any problems that they find with it even perhaps without the vendor's permission. The NDA that I was offered—the New South Wales Electoral Commission tried to employ me so that I could examine the source code but the vendor proposed a very onerous NDA which had, for example, I could not—

The Hon. Dr PETER PHELPS: Can you clarify what a NDA is?

DR WEN: A non-disclosure agreement. That would mean that potentially I could not, say, non-compete clauses so I could not work with the Victorian Electoral Commission on their system. I could not report any problems that I found without the vendor's permission. Even attending this public hearing would have been quite dicey if I had done that. It really restricts how you can scrutinise the system and openly talk about it.

The Hon. Dr PETER PHELPS: In the limited circumstances in which iVoting might be used, for example, remote people and people overseas, surely there is merit in a case of saying that it might not be totally secure but given the limited cohort this affects we can live with that. We are not talking about a system where everyone can sit in front of their computer and vote. It is a very limited cohort of people. Is there something—

DR TEAGUE: I think there is an argument only in the context of totally open and accurate technical information about what the security issues, vulnerabilities and verifiability of the system are and only in the context that other less glamorous but more obviously verifiable options have been considered for those votes. I think blind voters, for example, are a completely different cohort from overseas voters. Most overseas voters could download a blank ballot from the internet, fill it out and post it back.

CHAIR: How is that secure?

DR TEAGUE: Because you get to see what you have filled out on your piece of paper.

CHAIR: Or somebody else fills out on that piece of paper.

DR TEAGUE: Sure. There is still the authentication issue. I am not presenting this as a total solution.

CHAIR: It is a fairly significant problem.

DR TEAGUE: It is a huge problem but that problem exists with bells on for iVote as well. No system that we have discussed so far has solved that problem, neither the walking into the polling place problem nor the registering over the internet problem. If anything, the problem of merely needing to know somebody's address, date of birth and name to register is worse over the internet than by walking into a polling booth on polling day. At least you can only cover seven or eight different polling places between 8.00 a.m. and 8.00 p.m. on polling day. But think how many—there is almost no limit to how many people you could potentially register for if you knew their name, address and date of birth over the internet. You would not even have to be in New South Wales to do it. So it is a huge problem, I completely agree.

CHAIR: Are internet banking systems open source?

DR TEAGUE: No.

DR WEN: No. Those are proprietary—

CHAIR: Yes or no?

DR WEN: No, they are not open source. Internet voting is often compared to internet banking but it is two completely different things. I think we are all familiar with internet banking systems going down and having security vulnerabilities. We hear media reports all the time, even the big banks. Surely they invest a lot of money in their systems to try to make them secure. But they still get it wrong. But the thing is when something happens, if a transaction goes missing or if you see the wrong balance on your internet banking, it can be undone. You call up, it gets fixed. And you get statements so that you can verify the transactions.

Mr ANDREW FRASER: Or ring your wife.

DR WEN: With secret ballot voting you cannot undo something that goes wrong. The voter cannot check and see that something has gone wrong.

The Hon. Dr PETER PHELPS: That is right. You can check your balance but you cannot check the final printed result which appears in the Electoral Commission's offices, unless you have limited trace voting with a specific number on each ballot paper. But then why would you query whether your ballot has been accurately printed if you have received a confirmation number saying that your voting is correct? So you do not know to ask whether something is wrong because you have been told that nothing is wrong.

DR TEAGUE: Correct.

The Hon. PETER PRIMROSE: You are worried that there are no electronic hanging—

The Hon. Dr PETER PHELPS: Yes.

Mr GARETH WARD: My question relates to something that appears in the Electoral Commission's report in relation to the letter N appearing on 43 different ballot papers. Were you satisfied with the commission's response in relation to why that happened instead of the numeric preference allocation?

Dr TEAGUE: I think that that issue has been presented as something that was just ordinary and just like the ordinary rejection that sometimes happens when a voter accidentally fills in the wrong thing on their ballot, and so forth, and I regard it as absolutely nothing of the kind. There is absolutely no suggestion that any of these voters did the wrong thing when they were trying to enter their vote. There is every reason to believe that the voters were doing the right thing and the system malfunctioned and not only mis-recorded their vote but did not even record a valid vote. I think that really serves to underline what I have said about the total lack of evidence that the system records the right votes. We only noticed this is because those votes look funny, right? They have Ns instead of numbers.

The Hon. Dr PETER PHELPS: Was it just one N and remaining numbers, or was it Ns all the way down?

Dr TEAGUE: I believe they were different.

Dr WEN: I believe some of them may have had several Ns in. I am not sure.

The Hon. PETER PRIMROSE: That is right. That is my fourth question for this afternoon, on notice.

Mr GARETH WARD: Is there any jurisdiction to which we could turn to perhaps look for some other answers to some of the questions we have raised? I know I raised it earlier.

CHAIR: Australia, I think.

Mr GARETH WARD: Maybe Australia, as the Chairman has just noted. I am delighted to know he is familiar with the system. I am just wanting to know if you could give us some further advice on perhaps some other jurisdictions to look to as examples of sound administration in this respect?

Dr TEAGUE: It depends whether you want examples of good, or bad.

Mr ANDREW FRASER: Both.

Mr GARETH WARD: Both.

Dr TEAGUE: Because there are important examples of things that have gone badly, and you need to know about them as well.

Mr ANDREW FRASER: Yes, exactly.

Dr TEAGUE: Roland already mentioned the example of Norway. I think their administration has been an excellent example. They have insisted on absolute openness about everything from the beginning, including the source code but also all sorts of other documentation and so forth. The exact properties of the protocol they have got are somewhat debated, but that is fine, right? It is sufficiently transparent that there has been a huge wealth of public analysis talking about exactly who has to collude with whom to mis-record the ballot, and so forth. So the Norwegian authorities have a very clear idea of what assumptions they are making on the integrity of their votes. I am not necessarily saying we should copy their protocol, but I think we should—if you want to do more internet voting—copy their attitude to administering the project.

Mr ANDREW FRASER: Because of the shortness of time, even if you could give us some idea in a written response, it would be good.

Dr TEAGUE: In answer to the question of what other jurisdictions are doing?

The Hon. Dr PETER PHELPS: What about the American jurisdictions, like Arizona? Arizona has been operating for certainly for primaries for a while using electronic voting and they are always held up as a standard of how well things go.

Dr TEAGUE: I do not know about Arizona, I am sorry.

The Hon. Dr PETER PHELPS: Okay. That is all right.

CHAIR: Thank you for appearing before the Committee today. The Committee may wish to send you some additional questions in writing. The replies will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Dr WEN: Certainly.

Dr TEAGUE: So that question I can take on notice about protocols?

Mr GARETH WARD: You can.

CHAIR: We are yet to resolve about how much time that will be, but the secretariat will be in contact with you shortly with regards to any further questions we may have.

(The witnesses withdrew)

(Short adjournment)

MARK DAVID RADCLIFFE, Business Development Manager, Everyone Counts, affirmed and examined, and

IAN WILLIAM BRIGHTWELL, Director Information and Technology, NSW Electoral Commission, on former oath:

CHAIR: Thank you for appearing before the Committee to give evidence, and welcome. Before we proceed, do you have any questions concerning the procedure information that I hope was sent to you in relation to witnesses and the hearing process?

Mr RADCLIFFE: I received it. I read it. No problems there.

CHAIR: That is excellent. In what capacity are you appearing before the Committee?

Mr RADCLIFFE: The capacity in which I am appearing is on behalf of the company I now work for, which is Everyone Counts.

CHAIR: Do you wish to have your submission, which was received on 17 February 2012, included as part of your sworn evidence?

Mr RADCLIFFE: Yes. I would be happy to do so.

CHAIR: Excellent. Would you like to make a short opening statement before the commencement of questions?

Mr RADCLIFFE: Yes. Firstly, I would like to introduce myself. My current role is with Everyone Counts, but I originally started on the iVote project as a management consultant brought in by the New South Wales Electoral Commission. I, with help of others obviously, drafted the feasibility report that was tabled in Parliament in September 2010. Then I continued working with the commission and was the project manager through the delivery of the iVote project. Then my consultancy period finished and a little later on I received an offer and joined Everyone Counts.

A little bit about Everyone Counts: It was actually founded in Australia, although not in New South Wales, in Melbourne back in 1996. It is one of the leading providers of remote electronic voting systems around the world. It is currently based in San Diego in California. Obviously I am not going to go through everything I put in the submission, but I wanted to make a couple of statements. Firstly, I was very excited to be a part of the iVote project. It was very successful, far more successful than we had originally expected. There were, under the New South Wales Electoral Commission estimates, 20,000 to 30,000 people who voted because of iVote who would not otherwise have voted. Many of those were people who were blind or vision impaired. They had for the first time in a New South Wales election a secret and independent vote.

Ian Brightwell and I went, on behalf of the commission, to receive an award from Vision Australia, their MAD Award—Making a Difference. It is a very nice thing, when you do a project like this, to get that sort of acknowledgement. It also set a precedent in Australia because, other than the Australian Defence Force [ADF] trials in 2007, this was the first project aimed at people who are blind and with low vision but other groups, which enabled them to vote remotely. That was part of the reason that we had a much higher proportion in that category that actually turned out and cast a vote. We had the benefit of the by-election in November as well for Clarence. That showed an increased usage and also showed that it could be rolled out cost effectively for even a single by-election. I think that was a particularly useful piece of knowledge gained.

To address the objective of the submission that I made, which was very much around questions that were raised over the security of the system, the objective there was to bring some balance into the discussion, or at least that that was published, because there were comments made about iVote to other Joint Standing Committee on Electoral Matters [JSCEM] inquiries in other jurisdictions. This really is the first time there could be some arguments put to the points that had been made to those other Joint Standing Committee on Electoral Matters meetings.

I just want to say that, as you would all know, election processes are not flawless; they are robust, they have integrity, they are reliable but that is not to say that a single vote may not get counted. Perhaps the postal

vote comes in just too late, which can happen with remote rural voters or a declaration is filled out incorrectly. There are a number of reasons why individual votes do not actually get through, so it is not entirely flawless but we know it is reliable. There does appear to be an argument around electronic voting that it is different in that all the votes will be kept at one point in a single server, a central server, and therefore any attack that can be proven to be potentially possible will invalidate the entire approach because in theory you could change all the votes.

A common example that is often given of how you can change a vote is the virus attack whereby you could get a virus on an individual computer that would potentially change that individual's vote but this does not prove that you can change all votes. It would actually be a lot easier just to go to a polling place and impersonate a person that you happen to know the name and address of to cast a vote fraudulently rather than creating a virus that would have to operate undetectably, would have to have a specific purpose to change votes and with some rough estimations of looking at a close election you would say that such a virus would have to be one of the most rampant virus has ever created and far more rampant than anything ever created in the world so far. So it is a theoretical attack that you cannot argue that in theory it is possible to change a number of votes but in terms of actually affecting the reliability and integrity of the election overall, it is not really plausible.

Also, I just wanted to flag that in electronic voting security is continually advancing. We as a company are engaged in that, other companies in the field are engaged in that and there is a field of academia engaged in this and it is just like all elements of computer security, we continue to strive to make improvements. What is discussed at an academic level takes time to make it through into the real world and one of the challenges that you face in the real world is that something has to be both secure and usable. There was a lot of debate through the project as to what we would put in place such that we would reach a compromise between security and usability so that the voters could actually use the system.

An example of this would be we chose an eight digit iVote number and a six digit pin and if we had chosen significantly longer numbers, 32 digits or more, arguably the cryptography would have been more secure, that is, it would have used less computing power to be able to break an individual voter's keys to get in to cast their vote. But equally if you are distributing 32 digit numbers, particularly to people who are blind or have vision impairment or just to the average voter and expecting them to be able to cope with this, you are going to have a higher rate of failure of people actually being able to vote. It is always about finding a balance in the real world of voting. There are a couple of things that I heard just while I was waiting that were mentioned. I believe there was a question about the tender process.

CHAIR: I am just organising for Mr Brightwell to sit at the table because clearly he was here for some of the early evidence and it might be relevant to have him here as well, if he is willing. He is still under oath.

Mr RADCLIFFE: Shall I continue on the tender process?

CHAIR: Yes, please.

Mr RADCLIFFE: As the project manager I was responsible to Ian and so he and ultimately Colin were ultimately responsible for the tender process. So the tender process was run according to all the government procurement guidelines. We engaged the government procurement unit and we had within the New South Wales Electoral Commission a small team of procurement people one of whom was engaged in every step of the process. We had done a two-step process with a request for information during the feasibility and then we followed up with a request for tender, which is very much above board, debriefings to unsuccessful bidders, et cetera.

Mr BRIGHTWELL: Could I just add to that? That was a public tender which was advertised on the New South Wales Government tendering website. In that tender it had the selection criteria and the evaluation approach, so it was available to anyone who cared to download it and it may even still be there.

Mr RADCLIFFE: Were there any questions in regards to the tendering?

CHAIR: No, go on?

Mr RADCLIFFE: The next point that was addressed was there were comments made about the non-disclosure agreement that was put forward so that the member could potentially review the source code of the system. This was at the time of the by-election of Clarence. Originally they would put forward a standard non-disclosure agreement from Everyone Counts [NDA], which was a United States law document originally. There

was an objection to that and I thought that was quite fair. Then we said, "We've already got a contract with the New South Wales Electoral Commission which has appropriate non-disclosure agreements in place so if the person was to sign with New South Wales under a government non-disclosure then that would be fine", so that was also put forward as an option. It was not accepted.

I think it would be a false statement to say that either the Electoral Commission or Everyone Counts would try to prevent anyone talking to a forum like this or even making public if they found flaws in the system, but there are certain things that you do want to protect and one is that flaws are advised to the Electoral Commission and the people who want to fix the flaws within the system prior to it being disclosed publicly, particularly if it was in active use at the time, so there are some constraints that would be placed but it is not as if these are doctrines that would be used to try to gag someone. I would presume whistleblower legislation would also provide protections if there was something seriously wrong, notwithstanding the NDA.

Mr BRIGHTWELL: I just add to that that the organisations that we engaged to review the code have not felt that they have had any constraints in their ability to do similar work and there is nothing in the documents that we are aware of that we heard earlier in the evidence that would suggest someone was constrained in doing work of a similar nature.

Mr GARETH WARD: Would I be able to get a copy of that tender document?

Mr BRIGHTWELL: The procure information technologies conditions of engagement?

Mr GARETH WARD: The answer is yes, we can get a copy?

Mr BRIGHTWELL: Yes.

Mr GARETH WARD: Excellent.

CHAIR: Do you know of anyone who was engaged by the commission who has undertaken work, for instance, in Victoria?

Mr RADCLIFFE: Yes, we had Craig Burton work for us. As soon as the Victorian project was completed they had Craig Burton running that project. After their election in, I think November 2010, we had already taken some advice from him, being one of the experts in Australia in this field, and we had him work three days a week on our project past election day through to completion. He had particular focus on security and testing issues.

Mr BRIGHTWELL: And Craig runs the current project which was referred to earlier in testimony in Victoria. He is currently engaged in that role.

CHAIR: Was he subject to any restraint?

Mr BRIGHTWELL: He used a company he basically operates through and he signed up under the Premier's consultancy agreement and the conditions of confidentiality dealt with in that. That is the standard conditions of the New South Wales Government.

The Hon. PETER PRIMROSE: The matter was raised previously about the source code being made public: If you feel you are in a position to do so can you talk to us about the pros and cons of that?

Mr RADCLIFFE: I remember reading something where Vanessa referred to this as a vexed topic. I think that was an appropriate statement. It is interesting because one of our competitors, in Norway, was mentioned and the source code was published. That was a particularly expensive project compared to ours, for example, in Norway. Add an extra digit, basically. The issues there for our competitor to disclose a source code would be the same that we would face. That is, you would want to have a premium in the pricing to cover the risk but you would still probably, for a high profile project, be quite prepared to do so. To a certain extent it is whether the request for tender requires you to do so and then you would price appropriately for disclosing the source code. As a company we would not say no but we would make a commercial decision based upon the particular project we were prepared to bid on.

When it comes to an existing project, as the situation was with New South Wales, and I guess I did wear both hats. I wore one hat previously and now I have the vendor's hat on, there is no reason why Everyone Counts would not be prepared—under an appropriate non-disclosure to protect commercial interests—to share the source code. It has in many cases in many jurisdictions around the world shared the source code with appropriate people who have an interest and, particularly, the ability to review the source code and provide an assurance to the Electoral Commission, the electorate and ourselves that there are no bugs that put the system at risk.

The Hon. Dr PETER PHELPS: Did you have anyone externally review your source code?

Mr RADCLIFFE: We have had external people as a company. We have engaged external people to review the source.

The Hon. Dr PETER PHELPS: As individuals or companies?

Mr RADCLIFFE: Certainly as companies. I am not sure about individuals. There is an academic in California that we had to review, but that was before I joined the company. I'm not aware as to whether they had a small personal consulting company or whether as an individual.

Mr BRIGHTWELL: We also had, during the project, two companies do the security aspects and code reviews and a spot check of codes.

Mr RADCLIFFE: We had a third company. We had third parties do the cryptography review, the cryptography. Another one did the code review. It was the same company that did the code reviews for Victoria and the Australian Electoral Commission. They also came during the live election and broke the seals on the data centre to take an extract so they can also prove that what was actually running in the data centre live was what they had reviewed. The third company was the penetration testing and essentially "White Hat" hackers who we paid to try to break into the system and give us a report.

The Hon. Dr PETER PHELPS: Did any of those three companies identify vulnerabilities in your system?

Mr RADCLIFFE: Indeed, there were some vulnerabilities that were also flagged in the PricewaterhouseCoopers audit report. We had an extremely large risk register and all of those are logged in there. We went through all of those. I will give an example of one that we were made aware of that we decided was not necessary to fix. The penetration testing people found that by a complicated manoeuvre of having two sets of legitimate credentials—we gave them quite a suite of credentials for their testing—you could play around with the URLs and you could believe that you had cast two votes. So under the one set of credentials you could cast a vote and then you could cast another and think you had successfully cast it. When we looked into it at the server end there was an extra check there that rejected the second vote. Because of the play they were trying to do to thwart the system, they were not getting the warning that the second vote was being rejected. We looked at this and thought the worst-case scenario is that in the real world someone could make a claim that they had voted twice and we would have the proof that in fact it was rejected at the server.

The Hon. Dr PETER PHELPS: Did your system allow an informal vote to be cast?

Mr RADCLIFFE: Yes. It was a very deliberate decision in consultation with the commissioner whereby we determined we had to balance usability, particularly for a blind person. It forced the numbering to go in sequence but in a polling place or in a postal vote or other voting situation you can submit an informal vote.

The Hon. Dr PETER PHELPS: Can I ask Mr Brightwell, in that case, why did you choose to make that decision given the Australian Electoral Commission, when it instituted electronic voting federally, did not permit line voters to cast an informal ballot?

Mr BRIGHTWELL: I might ask you to pose that same question to the commissioner because it was a decision of the commissioner. At that time we consulted with him and his view was it was a possible scenario and there were people in the community who expressed their voting intent by voting informally deliberately and that we should give such an opportunity to people in the community.

CHAIR: But you cannot put an offensive message on the ballot paper in this one?

Mr BRIGHTWELL: No.

The Hon. Dr PETER PHELPS: The law requires people to vote, does it not? The law requires people to vote, so why are you allowing them to not vote?

Mr BRIGHTWELL: In a sense they are voting. They are expressing their intention by—

The Hon. Dr PETER PHELPS: No, the Act requires that you mark the ballot paper correctly for a formal vote.

CHAIR: I do not want to interrupt, but he has already indicated that these are policy questions that are appropriately directed to the commissioner.

The Hon. Dr PETER PHELPS: Are you suggesting that those 43 N ballot papers were the individuals putting "N" on their ballot papers?

Mr BRIGHTWELL: Can I just state that we provided Computing Research and Education Association of Australasia (CORE) members with a five-page document and we went through that in some detail and did provide an indication that the error was within the system not an error of the individual voting.

The Hon. Dr PETER PHELPS: So these people who review your source may not have been as good.

Mr RADCLIFFE: I would like to give an explanation of exactly what happened. I believe I can give it in layman's terms. First, I would add on that point in regard to submitting an informal vote, when a voter cast a vote they would go Legislative Assembly, then Legislative Council and then they would be shown the preferences for each on a single page that they had selected. If they had not selected enough preferences—that is, less than 15 if they are voting below the line or less than one in any other case—there was a bright orange warning with an octagon stop sign saying: "Your vote will not be counted, you have not marked sufficient preferences". But it was a conscious decision that the submit button would still operate and allow them to submit it in that way. That really is a policy question for Colin.

When it comes to the Ns, for the assistance of blind and low-vision voters it was determined that there would be a small piece of JavaScript, which comes with most websites, which would translate the press of the key N. Most users would double-click but for the blind operating through a keyboard we did not want them to have to find the appropriate numbers and keep track. So, for usability we said they just press the N key and it will give the next sequential preference, starting with one. So, this little piece of JavaScript, in certain instances where a blind person in particular was using a screen reader, which has to be reading it out to them and it has to run on their PC and interact with everything they are doing on every website, so it will slow down their PC, that combined with a very slow Internet connection in some cases caused them to be able to operate the keys before the JavaScript had started to run. That meant their first preferences, the first time they hit the N key and in some extreme cases more than the first one, but two or three, they hit the N and it showed an N instead of putting the next number in.

We analysed these, and we also knew very clearly because we tested it by forcing Java script off in the browser. Not allowing Java script to run in their browser is an option some people could have if they are a bit paranoid about security. So when you got to that same screen that showed your preferences it would have also given you a warning saying there was an invalid character, the N was shown, and you would have the choice to ignore that warning or go back and change your vote and clear those preferences and start again. In every one of these 43 cases the person was shown, or if they were using a screen reader it read to them their selection. It told them there was an N there, not a 1, and it said it would not be counted because it was invalid. Then they still hit the submit button. This was part of the reason for the determination of the commissioner that that was how they had actually submitted the vote. It was a failing in the system and it has subsequently been fixed. It was not something that any of our testers found.

Mr ANDREW FRASER: You mentioned a minute ago that there was an issue where someone put their credentials in twice.

Mr RADCLIFFE: Yes, that was something the penetration testers found. You could not put in your credentials twice but you could put the credentials in once correctly and then put in someone else's credentials and you were logged in as them. They found a way you could change the user you appeared to be logged in as. It would then give you the appropriate ballot paper for the original user you had already cast a vote for. You would appear to be casting a vote again for that same i-vote PIN combination. That was the one that was rejected at the server because it knew quite clearly that that user had already voted.

Mr ANDREW FRASER: What if someone had taken your credentials somehow and voted for you previously, if they had hacked into your computer, your phone or whatever? That would mean the legitimate vote would not have been counted.

Mr RADCLIFFE: A legitimate voter would not have been playing with uniform resource locators [URLs] and other people's credentials so they would have got a very clear and simple warning saying, "This i-vote number has already been used; you have already cast your vote." There would also be a statement that if you had not cast your vote or you had any problems you could call the help desk. There are a number of controls and sometimes it is not so much about the IT as about the procedures you put in place. Just as for registrations it is easy to go to a polling place and give someone else's name and address we were obviously concerned about that with the i-vote registrations. Every person who applied to use i-vote at their enrolled address would receive a letter acknowledging that they had applied to use it and requesting that if it was not them to please call us immediately and advise us that something was wrong. We got not a single call. Fortunately Australia has a low degree of electoral fraud compared to some other countries I visited recently. Equally, if a person phoned us and said, "I did not cast a vote", we would be quite prepared to take a statement from them to that effect and nullify the vote that had been cast under that particular i-vote ID and re-enable them to cast another vote.

Mr ANDREW FRASER: Which basically means you could access someone's vote and know how and where they voted whereas under a paper system you cannot.

Mr RADCLIFFE: No, you could not. The actual preferences were encrypted through encryption keys that were locked away through a set of passwords held by a quorum of five or six members of an electoral board.

Mr ANDREW FRASER: If there was one instance that you said you failed to correct because you did not think the risk was great enough, how many other instances are there that have shown up as weaknesses in the system where someone could do something untoward that you have decided not to correct as well?

Mr RADCLIFFE: Not many. That was one instance where something was flagged to us. Another instance is the man in the browser attack that I outlined before where you could create a virus that would in theory undetectably change people's votes on their PC. But as I said, it would be very hard in practice for that to have any meaningful impact on an election. In this case again we assessed this and we were very aware of the fact that it could create a perception that you could vote twice, but we are also very confident that in fact it was not a real attack because no second vote was cast.

Mr ANDREW FRASER: But if the system expands and more people start to utilise it, which is quite possible because I think even the commission was somewhat surprised at the number of people who utilised it, surely that would then mean you could get to a situation where something could be changed or altered and affect the results?

Mr RADCLIFFE: Again, all of these potential issues are around a single vote. If you compare an example of protecting a single vote in the current paper system, it is far, far more difficult with all these attacks to have the impact of changing a single vote than any potential attack on the paper system.

Mr ANDREW FRASER: The first by-election in Dubbo was won by an Independent by 14 votes. I make that observation.

Mr RADCLIFFE: And having done a little statistical analysis on the hypothetical virus attack I used such close elections as that. It is amazing how many personal computers you need to infect to have any impact. We have floods and we have issues with ballot boxes. The Australian Electoral Commission had an issue with two half-full ballot boxes being combined into one without scrutiny and had to discount an entire ballot box. We have well-established procedures in place where within the electoral process we can deal with something if it goes wrong. Even with all of the risks within the electronic voting that we have assessed—and this is quite

deliberate with, for example, the choice of the voting period not including election day—if there are any issues there is the potential to fall back to the paper system. I am not advocating that we go with universal internet voting and replace the paper system at all, but I think there are poorly enfranchised groups that will benefit significantly from access to internet and telephone voting. In all cases the risks are manageable and manageable to the extent that they are generally far less than the risks with the current paper system.

CHAIR: That is probably a good place to end.

Mr GARETH WARD: Five minutes?

CHAIR: No. You can put questions on notice. Mr Brightwell, you were interrupted by Mr Fraser in answering a question. Did you have something that you wanted to conclude on?

Mr BRIGHTWELL: The process by which the system is assessed was one where the consultants we engaged provided advice. As we got advice as to the points they considered and we identified risks that were unacceptable we rectified them and then there was an iterative process. What were left were issues—I note the point Mr Radcliffe made in relation to outstanding risk matters; notwithstanding the description he gave, the summary is there was no risk to the electoral process. It was risk of confusion or the system maybe not performing from the user's perspective in the way that they might have thought. The actual integrity of the process was not at risk in the risk they defined. We did not leave on the record any risk that we could see that had any substantial impact on the electoral process in the scale of the activity we were dealing with.

CHAIR: Are you going to be back this afternoon at 4.00 p.m., Mr Brightwell?

Mr BRIGHTWELL: I will be back this afternoon.

CHAIR: That might satisfy Mr Ward. Thank you for appearing before the Committee today. The Committee may wish to send you some additional questions in writing the replies to which will form part of your evidence and be made public. Are you happy to provide a written reply to any further questions?

Mr RADCLIFFE: Yes, certainly.

CHAIR: I do not think you took any questions on notice. I think the only issue on notice was with regard to the tender.

Mr BRIGHTWELL: I think the question of informality might still be on notice.

The Hon. Dr PETER PHELPS: I will raise it with the commissioner this afternoon.

CHAIR: The secretariat will be in touch if there is anything further.

(The witnesses withdrew)

ANTONY JOHN GREEN, Election Analyst, ABC, affirmed and examined:

CHAIR: Thank you for appearing today. Before we proceed, do you have any questions concerning the procedural information sent to you regarding witnesses and the hearing process?

Mr GREEN: No. I am a consenting adult in this circumstance.

CHAIR: In what capacity are you appearing?

Mr GREEN: I am appearing in a private capacity. I work for the ABC as an election analyst, but the ABC has no particular policy of views and some of the issues the Committee is hearing. I am attending in a professional personal capacity.

CHAIR: I take it that you wish your submission to be included as part of your sworn evidence?

Mr GREEN: Yes.

CHAIR: Would you like to make a short opening statement before questions commence?

Mr GREEN: Yes, I will make some brief comments. I have commented on a number of matters that I think are of concern in the New South Wales Electoral Act in the conduct of elections. I am happy to take some questions on broader issues—electronic voting, informal voting, attendance—and I do have a relatively strong and comparative background in covering elections around the country. So I am happy to deal with other issues.

CHAIR: I think we concede that.

Mr GREEN: But for the moment I will just make some initial comments. In my submission I raised the issue with the writ date. New South Wales has fixed term parliaments, a fixed dissolution date and a fixed election date but has a variable writ issue date. There is no reason to continue with this wobbly date for the writs. The legislation could be amended to say that on the date of dissolution the writ also is issued. There is nothing to stop that occurring and it would stop the problem. At the moment the Electoral Commission had all the material before the election saying the polling day would be on the 25th but it could not tell you when the rolls closed or when the nominations closed. If they would specify when the writ is going to be issued, the closing of the rolls would then occur with the close of the writ. That is specified. You could then specify when the nominations close. So with a fixed-term election date you could then specify all those details where currently because the writ date is not specified, it is difficult to do. You cannot do that. That variable date is a hangover from when the election date was variable. That provision was there so that if the Parliament expired by the effluxion of time, the writs had to be issued. That is why it is there. But that provision has not been changed to deal with fixed terms.

The Hon. Dr PETER PHELPS: That is our first recommendation, thank you.

Mr GREEN: The registration of electoral material began in New South Wales in 1988 and the provisions have become more and more complex. There are all sorts of funny rules about what you can and cannot say on how to votes, what images you can put on how to votes, whether you can or cannot recommend votes between the two Houses of Parliament. Also above all those are these peculiar provisions about who can access the material once it is registered. In Victoria material is registered for how-to-vote cards, the commissioner says that it meets the requirement and then it is put on their website and anybody can look at what is registered and verify that what is being distributed on election day is valid or not. In New South Wales you can turn up to vote, the party has registered some material, which meets the requirements of the Act, it has some sort of ambush involved in it and then nobody knows that until the day the material is issued. Even then, because of the way the law is written, nobody working in a polling place under that law is permitted to see what is registered unless they go to the returning officer. If you are handing out in Deniliquin, you have not got time to go to Broken Hill to visit the returning officer. The way it is written is a bit ridiculous. Some States do not register material.

I think the material should be registered, the provisions should be simpler and the material should be publicly available because to some extent there are two things going on outside polling places on election day. One is campaigning and one is trying to ensure people cast a formal vote. In many countries you cannot

approach a voter outside a polling place. In New Zealand you cannot even have a poster up anywhere in the country on election day. We handed out how-to-vote cards originally in Australia to ensure people cast a formal vote. Because we have compulsory preferential voting and compulsory voting, you want someone to fill in the ballot paper correctly. That was the origin of how-to-vote cards. It is increasingly being used also as campaigning material. So there are two functions, but if the registration of material is about ensuring that issues to do with preferences are correct, that could be kept separate from the issue of campaigning outside of polling places. One of the problems with polling places is that there is too much campaigning. One of the reasons you are seeing people going to pre-poll voting centres is that there is the crush outside of polling places. In Victoria in some rural electorates, for example, Mildura, 25 per cent of people voted pre-poll. Was that a reflection on what had happened a couple of months earlier at the Federal election in terms of campaigning?

The Hon. Dr PETER PHELPS: Or it could be that they just do not want to come into town on the day when they come in otherwise, say, on the Wednesday beforehand.

Mr GREEN: Yes. I would agree with that in a real sense, but it occurred also in city seats. I do think there are issues with queuing and campaigning outside polling places, which puts people off turning up on the day. There are issues to do with campaigning that are feeding into other issues outside of polling places. In respect to issues with the Legislative Council, New South Wales has a procedure where it does not attempt to count any below-the-line votes on election night or before those ballot papers reach the electronic counting centres. The Federal and other States try to make some estimate of how many votes are below the line. They include some informal votes in those below-the-line votes, which will eventually be knocked out in the counting procedures once they do the data entry process. That means that federally and in other States you tend to have a slightly inflated vote at the start and then once the data entry starts, the number of below-the-line votes diminishes. So you do not get a dramatic change, you just get a slow change. In New South Wales because there were no below-the-line votes in the count until data entry, because a fifth of the vote for Pauline Hanson was below the line, her vote continued to rise in a way we were not expecting.

CHAIR: You were in London at the time, were you not?

Mr GREEN: Yes I was, which meant that at about three in the morning Sydney time I saw the final release of primary figures.

CHAIR: I remember that well.

Mr GREEN: The first preference votes before anybody else saw them in Australia. I rang the Sydney news room of the ABC and said, "Have you seen the final figures?" They had not. That was quite a dramatic day, I must say.

CHAIR: My State director had a different view to you as to how it was going.

Mr GREEN: Yes. That is actually one of the problems with the way those votes were counted. They could be counted differently. It is something that could be discussed with the Electoral Commission. It is an issue that comes up with local government elections as well because similar sorts of procedures are used there. I think they could be counted differently. The Electoral Commission has a different view. I think it is something that should be considered. I have raised an issue that I think is a serious issue, and that is that the sheer size of the Legislative Council ballot paper is getting in the way of the elections in this State. This gigantic ballot paper gets in the way of voters trying to vote, gets in the way of people trying to count votes, and you get vast numbers of these big, blank ballot papers being left over at the end of the count. You have no idea, except for the squiggle on the back, whether these have come straight from the pile or whether they have actually been through the hands of the voters. Only 2 per cent of people are voting below the line anyway. For the other 98 per cent of ballot papers, 80 per cent of them have a single "1" and about 18 per cent have a number sequence above the line. So we are handling several million gigantic ballot papers to cope with a very small number who vote below the line.

That ballot paper cannot be scanned. The Australian Capital Territory with a much smaller Hare-Clark ballot paper scans all its ballot papers now with OC—optical character—recognition technology, and that works relatively well. We cannot scan a ballot paper that size. You just have not got a reader for a ballot paper that size. However, if you came up with a ballot paper that was just the above-the-line votes for people who only wanted that ballot paper, only wanted to vote above the line, and clearly most people do, you can have a much smaller number of the very large ballot papers and a large number of above-the-line votes, and you could make

them of a size that could be scanned. You may have to turn the ballot paper round so it is vertical rather than horizontal. There are different ways you can do that, but given that very few people vote below the line and those ballot papers are enormous, I think it is getting in the way of the count in this State. It causes problems, as we saw in the Hanson challenge before the Court of Disputed Returns, people misunderstanding what the counting procedures were. They thought they were saying that is not a blank ballot paper, and that was just a classification issue for some people. I think there are ways to do that.

If you go down that path you have the problem that we have groups on the ballot paper that are not identified, and that is because when the registration procedures for parties were put in place over a decade ago a decision was made to make all parties register 12 months ahead. If they had not registered 12 months ahead they could not have a registered name on the ballot paper. I raised this matter at the last local government inquiry by this Committee that rather than have a column on a ballot paper, or if you introduce the new above-the-line style vote, rather than just have a box there with no names next to it and some way of identifying who these people are, putting the name of the lead candidate on the group next to the name of the box, I think these are ways to deal with that. But I disagreed with the 12-month rule when it was introduced. I thought that rule was too long. I have always called it the No Aircraft Noise Party provision. Those of us were around in 1995 would know what I am talking about there. It meant that a party which came up with a really big issue just before the election could not get registered. That is why I disagree with the 12-month rule. I can understand why both major parties liked that rule originally, but what surprised me was that the minor parties liked that rule as well for different reasons.

I have raised one other matter in relation to informal voting with the electronic voting. To some extent, having read many legal papers on this issue, there is an argument about what a vote is, and what the voting process is. South Australia is the only State that clarifies the rule on that. It states on the ballot paper in South Australia that you do not have to fill it in, even if you do not put wording on the ballot paper. If it is acknowledged in the Act that you do not have to actually turn up, have your name crossed off and accept the ballot paper, if it is accepted that you do not have to fill it in then you get around this problem with electronic voting. What you are saying is that with the manual ballot paper you can turn up, have your name crossed off, take the ballot paper, refuse to fill it in and just stick it in the box and you have not committed an offence unless you admit to it.

The Hon. Dr PETER PHELPS: That is right, but you have still committed an offence.

Mr GREEN: But there is no evidence because it is a secret ballot.

The Hon. Dr PETER PHELPS: The administration of laws in this State should not assist you to break the law.

Mr GREEN: That is right, but the point in this case is that because it is a secret ballot there can be no evidence so there cannot be a prosecution unless you admit. The problem with electronic voting is you are voting, you have been sent an ID; if you vote informally you are admitting you voted informally. I think the provision of the Act needs to be altered to accept the fact that a voter in voting does not have to fill in the ballot paper and that resolves the issue. I think you have a problem there.

The Hon. Dr PETER PHELPS: It is taking the onus from the current Act which implicitly, at least, and I would argue explicitly, requires you to cast a valid vote.

Mr ANDREW FRASER: A compulsory vote.

Mr GREEN: That is true but it is actually an issue that has been raised many times in legal cases that I did vote or I did not vote. What is the process of voting? You have actually got a legal issue there. I am happy to accept questions.

Mr GARETH WARD: As much as I would like to ask you questions on the redistribution, I will stick to the subject matter.

The Hon. Dr PETER PHELPS: Kiama is being abolished.

Mr GARETH WARD: As long as it goes with the upper House at the same time. I refer to the Court of Disputed Returns. There was some discussion in the report on the 2011 election from the commissioner.

Given your experience, are there any suggested changes that you would like to enunciate now? How could they be implemented?

Mr GREEN: The original Electoral Act in New South Wales left the resolution of disputed returns to the Parliament and until the 1920s the Parliament had a disputes committee which would deal with elections that were disputed. Just as an interesting example, when they introduced a new Electoral Act in 1894 it introduced the first provisions to force returning officers to mark the ballot papers. There was actually a contest in that election which was voided by the committee because the returning officer in Rylstone had not got the instructions correctly and there were several hundred ballot papers that had not been initialled and, therefore, the committee ruled they were all informal. There are issues.

After the formation of political parties it was decided that having a party-dominated committee determine the validity of these issues was wrong and so they set up the Court of Disputed Returns procedures. They are not used very often. What was interesting in those hearings was the judge who was sitting as the Court of Disputed Returns was constantly after clarification as to what his powers were because it is a very unusual court. Graeme Orr has done a paper for Colin Barry—which I have not read but I am sure Graeme as a scholar in this area knows these provisions. I do not think there is any other way, apart from a court of that sort, but it is probably a matter of clarifying the process of how it should work.

CHAIR: It was a bit of a circus, in a sense, wasn't it? It was an unusual interactive process. I think you sat through each of the days of the hearing.

Mr GREEN: I sat through some of the days of the hearing. It was interesting that the judge was asking the barristers present to give him advice on what his powers were and what he could rule, which I thought was slightly odd.

Mr ANDREW FRASER: I refer to the crush at polling booths and the how-to-vote material. Do you have an opinion about displaying how-to-vote material inside the booths to get rid of those who chase people? The Nationals did a survey in 1999 or 2003 exit poll where we found a huge number—I think it was more than 20 per cent—of people make up how they will vote either on the way to the polling booth or at the polling booth.

Mr GREEN: I did not bring an example, but the South Australian Electoral Commission actually puts how-to-vote material on the voting screen, voting partition. All candidates are permitted to lodge a formal how-to-vote which is placed on the screen and voters are able to see it when they vote. In fact, a booklet is available for people.

The Hon. Dr PETER PHELPS: How does that become workable when you consider our Legislative Council ballot paper?

Mr GREEN: It is only for the lower House.

The Hon. Dr PETER PHELPS: How many columns did it have last time? It must have had more than 20?

Mr GREEN: The recommendation is only for the lower House. They only put the lower House on them.

Mr ANDREW FRASER: Do they still hand out how-to-vote material outside the building?

Mr GREEN: They are still permitted to hand out how-to-votes. To some extent with optional preferential voting, and you only need one mark, I think the reason for how-to-votes is actually diminished in New South Wales. I think there is too much of a crush outside polling places. I remember in New Zealand, as I said, you cannot campaign, in England and many other countries—

The Hon. Dr PETER PHELPS: Not in the Australian Capital Territory either.

Mr GREEN: Beyond 100 metres you can in the Australian Capital Territory and the same in Tasmania. In Tasmania you need five preferences and in the Australian Capital Territory you need one preference for a formal vote. Again the idea is you are not actually campaigning on the doorstep of the polling

place. I think you could go down the path of putting up that material. It is a very short campaign period in New South Wales, it is only about 19 to 22 days. They are having to print gigantic ballot papers, if you are asking them to also register how-to-vote material, print it, put it on all the voting screens, that is actually getting very complex. It is tough. Some of these issues are more important federally where they have compulsory preferential voting and clearly some of the high informal rate in electorates to me is partly driven by polling places where people are not handing out how-to-votes. People turn up and do not know how to fill in their ballot paper.

The Hon. PETER PRIMROSE: I am very happy with the conversation that is taking place and it is answering some of my questions. What are the reasons for requiring people to register their how-to-votes?

Mr GREEN: The only argument for it would be to stop people doing misleading things. In Camden in 1988 you might remember a party called the Independent DFF that was running in that election. Some of the provisions which were originally put in the Act at that time were something to do with that party, and limiting what they could do with how-to-votes, that is my understanding of it. There have been funny rules in this. I remember the 2004 Federal election there was a party called Liberals for Forest.

The Hon. Dr PETER PHELPS: I remember it very well.

Mr GREEN: So there are reasons for registering to stop people doing misleading things. In fact, the Liberals for Forest solution, the change that was made there was to change the way the parties were registered to stop misleading names being used. There was a good example in New South Wales at the State election where the Labor Party had a how-to-vote card statewide which sort of indicated preferences—one Labor: two Greens—in a number of seats. Come election day, that was not what was on the how-to-vote card. There was this argument going on between the Labor Party and The Greens about whether they were directing preferences. In fact, the Labor Party had chosen not to direct preferences but nobody knew that until election day because the material was kept secret.

Why is that material kept secret if not for the fact you want to ambush along the way in running an election campaign? That would be my view. In Victoria all the material is registered. The commission has an original look at it, says that is fine, there is nothing misleading going on here, and the material is put on the website. It does not stop parties registering more than one how-to-vote card. You can put several sets of preferences in and only distribute one on the day. You have gone through the registration process and it is made available.

Mr GARETH WARD: Coming back to the commentary about the crush around polling booths, do you think it would be worthwhile for this Committee to consider similar provisions to the Australian Capital Territory in relation to the area that needs to be excluded from campaigning on election day.

Mr GREEN: I am a believer that there should not be that mad campaign outside the polling place. If this was a voluntary voting system then everybody who is turning up to vote has got a view. With compulsory voting there are people who turn up who really are making up their mind as they turn up. If you could not change someone's mind on the doorstep of the polling place then parties would not be campaigning so actively.

The Hon. Dr PETER PHELPS: There are still people who turn up to the polling place and because of the inconsistencies between the State and Federal systems want to know: how do I vote here and do I have to number all the boxes. We could leave it to polling officials to explain in detail to every person who might have a misunderstanding about how to vote. The volunteer labour which is provided by the parties overwhelmingly fulfils a basic democratic role; you have to put a "1" here and you can fill in more if you want to. For this other one you can put a "1" or fill out more if you want to. I am only supposed to put a "1"? No, that is when you are voting for the Federal Government. I can understand why some people do not like the crush but it is a service to people who are not as engaged in the political process as you or I may be.

Mr GREEN: There is no way at a Federal election you could ban how-to-vote cards. With compulsory preferential voting you have to number all the squares. Parties are concerned that they have someone to vote for them but the vote is tossed out because they have not filled in preferences correctly. In New South Wales with optional preferential voting you could argue you do not need as much crush outside of polling places. There are rules about the size of posters you can put outside of polling places. It is hard to figure out how you regulate it. If you allow campaigning outside of polling places how do you regulate it? If someone is being offensive or

rude towards voters as they turn up, it is stupid of a party to have someone outside that is going to be rude to people turning up to vote.

The Hon. Dr PETER PHELPS: In most cases you would have polling booth officials ask them to leave the area.

Mr GREEN: We all know of examples of hotly contested seats that have ended up with eight or nine candidates on the ballot paper and everybody is turning up trying to stick a how-to-vote card in a voter's hand. I suspect there is no way we can abandon how-to-vote cards. In the Australian Capital Territory and Tasmania it was partly about the Hare-Clark electoral system and ensuring that parties didn't have official tickets of order for electing their candidates. If voters turned up they did not get a how-to-vote card with the Labor Party's ticket to determine who will get elected. It is forcing the voters to choose between the candidates on the ballot paper.

The Hon. Dr PETER PHELPS: What an outrageous assertion: voting for individual candidates? It would not happen in the upper House.

The Hon. PETER PRIMROSE: I have read the submission and I would like to have you here for another hour. Everything you put out is very interesting.

The Hon. Dr PETER PHELPS: I would like to put on the record a statement. I think Antony's work over many years in relation to matters psephological has been fantastic and his reports after the elections are an invaluable resource for anyone with even a vague interest in political science.

The Hon. PETER PRIMROSE: That is bipartisan position.

Mr GARETH WARD: I thought your blog on the redistribution was lacking on Kiama. We had a discussion earlier today and I would be interested in your view on the issue of voter fraud and voter identification. What would your view be on the issue of providing some form of identification at the polling booth in order to authenticate the identity of a voter to ensure the extra layer of integrity in the process?

Mr GREEN: There are a number of issues with voting and registration in this country which we leave slightly blurred. We do not define what someone's principal place of residence is. As long as someone registers on the roll at an address and they only do it once, we tend to be quite comfortable with where they registered to vote. We do not make a huge fuss about that. University students can be at St Andrews College and still registered where they live. When I was in Scotland a number of years ago when people turn up to live at St Andrews university they get their enrolment moved there. That is something we do not do. There are a number of issues about where people live that are quite loose. If we had voluntary voting there would be lot more issues with impersonation than occur under compulsory voting. Dr Phelps raised earlier the issue of voting for his brother if he wanted to.

The Hon. Dr PETER PHELPS: I am not suggesting that I actually do it but I am saying there is potential for me to do it.

Mr GREEN: I suspect that there are people who turn up and vote for their children who are overseas thinking they are avoiding their children getting fined. The numbers are probably quite small. I do not think there is any systematic rotting of the rolls of voting for party purposes. Mainly because you would have to know that somebody is not voting to be able to vote on their behalf. There could be some questions there in terms of impersonation. In terms of multiple voting I do not think there is anything systematic there. There are some people who seem to have an anarchic view that they can undermine the whole process by voting multiple times. As Colin Barry referred to earlier, there are one or two people that are known to do that. My view would be if the Electoral Commission was given the right to declare somebody as a suspect voter so they have to present identification that would be better than making everybody present identification.

A good comparison is with someone trying to run a business. Elections are not running a business. You are supposed to spend as much time as possible verifying everything. Banks, businesses and credit card issuers accept a degree of fraud. It costs too much to stop all fraud. Running an election is not like running a business; you cannot factor in the cost of fraud. If you run a shop and you want to stop shoplifting one of the easiest things to do would be to check everybody's bags on the way out. But if you want to run a successful business treating all customers like potential shoplifters is not a way to endear yourself. In the same way I do not think

we should treat all voters as potential criminals. There is a small number who have that potential and maybe should be dealt with separately.

There was a Coburg by-election in Victoria in the early 1990s. Coburg is an area with a very high ethnic population, lots of very funnily spelt names, and people who weren't good at English. They had a trial. They sent everybody a voter card to turn up and vote with on the day. There was huge concern by the political parties about this if somebody went along and collected the cards out of the post boxes and turned up to vote at different polling places with the card.

The Hon. Dr PETER PHELPS: That is the H.S. Chapman Society's pet beef.

Mr GREEN: That is the point. Those cards are not proof of identity.

The Hon. Dr PETER PHELPS: They are proof of enrolment.

Mr GREEN: And do you want to use them as the primary ID? If you wanted to make people present ID—I am not sure how long the process of voting, getting your name checked off the roll takes. Say it is 30 seconds to turn up, find your name, cross it off and move on. If the person has to check photo ID do you add another 30 seconds to the process and does that add 30 seconds to the process for everybody who votes in the State?

Mr ANDREW FRASER: It depends if you use your passport photo or not.

Mr GREEN: That becomes a 50 per cent increase in the time you are spending.

The Hon. Dr PETER PHELPS: Why do you need photo ID? Surely you could have a driver's licence, 100 point I.D. from a credit card, or something like that?

Mr GREEN: That takes even longer. The photo ID is the easiest of course.

The Hon. Dr PETER PHELPS: My credit card has my name on it, I can present that.

CHAIR: He is not persuaded.

Mr ANDREW FRASER: You have gone through the process with the bank card.

Mr GREEN: It does not prove who you are. It does not stop impersonation.

Mr ANDREW FRASER: I know that.

The Hon. Dr PETER PHELPS: No, but it makes it far more difficult because it requires the physical transfer of documents from a legitimate voter to an illegitimate voter. I am not going to change your mind, am I?

Mr GREEN: It will slow down the process. It is a matter of whether you think that is worth doing. Is the problem big enough to spend more money to employ more staff to do it?

Mr ANDREW FRASER: I scrutineered in both the Clarence and Dubbo by-elections. There was a higher than normal proportion of votes. In fact, 100 votes with no initials on the back were found on a table one afternoon in Clarence. If we had voter ID there would not be an opportunity for someone to secrete a ballot paper into the count. I have my own suspicions about those situations. A bag of votes also went missing from a Wellington booth and so on.

The Hon. PETER PRIMROSE: It sounds a bit too much like Communism.

Mr ANDREW FRASER: Well, Labor was involved.

Mr GREEN: Were the ballot papers at a particular polling place? Did it correspond to how many ballot papers were issued?

Mr ANDREW FRASER: No. This happened during the check counts in both places. They just turned up and they were allowed. I asked the assistant electoral commissioner at the time to disallow them.

Mr GREEN: I do not think ID—

Mr ANDREW FRASER: But IDs insert another layer that will make it much harder to do. The bag of Wellington votes that disappeared and turned up late—

Mr GREEN: They could mark off the roll electronically. That was trialled—

The Hon. Dr PETER PHELPS: It is not going to happen; it is too expensive.

Mr GREEN: It was trialled at a by-election in Western Australia. All the polling places had wireless technology and the names were marked off. A very small number of people tried to vote more than once and they were told that they had already voted at another polling booth. Impersonation can lead to multiple voting with someone else turning up at another place or it can be a clerical error. If you go down the path of having a central marking system, you must have a facility whereby someone can turn up to be told they have already voted and then be allowed to cast a declaration vote.

The Hon. Dr PETER PHELPS: Except that if that person is legitimate he or she will have ID proving their identity.

Mr GREEN: But who was the person who voted? You can never find that ballot paper because it is secret.

The Hon. Dr PETER PHELPS: There is another H. S. Chapman.

CHAIR: Thank you for appearing today. The Committee may wish to send you some additional questions—and I suspect that it will. Those questions will be in writing and the replies will form part of your evidence and be made public. Would you be happy to provide written replies to any further questions?

Mr GREEN: Yes. However, I am about to depart overseas for six weeks. I am doing a bike ride from Rome to Paris.

(The witness withdrew)

(Luncheon adjournment)

FIONA NICOLE GIVEN, Policy Officer, Australian Centre for Disability Law, affirmed and examined:

MS DAILA ROZSA-BROWN, assisting the Committee:

CHAIR: Welcome to the inquiry and thank you for appearing today to give evidence. I will ask you both to take the oath or affirmation.

Ms ROZSA-BROWN: I think just Fiona needs to do that because she will be speaking through her Pathfinder. She has the affirmation ready to go. She will do everything through her Pathfinder and I can clarify, because I will be reading off the Pathfinder. If that is alright, I have spoken to Fiona and that is what she would prefer to do.

CHAIR: Is that right, Fiona?

Ms GIVEN: Yes.

CHAIR: Before we proceed, do you have any questions concerning the procedural information sent to you regarding witnesses and the hearing procedure?

Ms GIVEN: No.

CHAIR: This is a formal question: Do you wish to have the submission you provided included as part of your sworn evidence?

Ms GIVEN: Yes.

CHAIR: Would you like to make a short opening statement before the members of the Committee ask you some questions?

Ms GIVEN: Yes, I would. The Australian Centre for Disability Law is a community legal centre which specialises in disability discrimination and human rights law and policy. We provide legal advice and representation to persons with disability and their associates and undertake law reform, continuing legal education and community legal education activities. We welcome the opportunity to give evidence at this hearing.

Firstly, we would like to draw your attention to Article 29 of the United Nations Convention on the Rights of Persons with Disabilities, which covers participation in political and public life. This article requires state parties to provide access to voting on an equal basis with others. This includes ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use.

Given that Australia has ratified the United Nations Convention on the Rights of Persons with Disabilities and that the right to vote is a civil and political right, it is immediately realisable therefore, that Australia must amend all laws related to voting so that it reflects Article 29. We applaud the introduction of technology-assisted voting which enabled persons to cast their vote via the phone or Internet in the 2011 New South Wales State election, as this enabled many persons with disability, in particular persons with vision impairments and persons with dexterity impairments to vote in secret for the first time.

However, it is arguable that the arrangements for electronic voting continue to breach section 24B of the Disability Discrimination Act 1992. Although persons with disability are able to cast a secret vote through technology-assisted voting, this is still on different grounds to everybody else. Persons using technology-assisted voting were required to vote prior to polling day and the system was not available at polling booths. Persons with disability feel that it is important that they are visible at polling booths so that on polling day certain political parties and other candidates are aware that they are an important part of their constituency and that their issues are brought to the political forefront. It is therefore our position that technology-assisted voting be available at polling booths in order for persons with disability to be able to participate in voting on an equal basis with others. In addition, all polling booths ought to be fully accessible in accordance with the Disability (Access to Premises—Buildings) Standards 2010.

Secondly, we are concerned about section 25 of the New South Wales Parliamentary Elections and Electorates Act 1912 as it disqualifies a person from voting if they are found to be incapable of understanding the nature and significance of enrolling and voting due to being of unsound mind. This section fails to state who can make this disqualification decision. This judgement could be made by someone who is not engaged with the person regularly—someone who does not understand the complex nature of capacity or someone who has a desire to exert control over the person. This means the section is open to being used as a form of abuse towards persons with disability. Persons with an intellectual impairment or psychiatric impairment who are able to understand the ramifications of enrolment and voting could be judged to fall into this definition inappropriately.

The section's test as to whether the person in question understands the nature and significance of enrolment in voting is unsuitable. It could be argued that persons of unsound mind do not have this understanding when it comes to the electoral system, and incorrect assessment of a person's capacity can result in the denial of a fundamental human right to make autonomous decisions, thereby depriving persons with disability the opportunity for self-determination. Furthermore, in accordance with article 12 of the Convention on the Rights of Persons with Disabilities, legal capacity ought to be recognised and persons ought to be provided with support to exercise their capacity. Therefore, it is our position that section 25 of the Act be repealed in order to eliminate any possibility of persons being wrongfully classified as being of unsound mind and, consequently, being unable to enrol and vote in New South Wales. Thank you.

The Hon. Dr PETER PHELPS: In relation to technology, would you envisage that being available at all polling booths, because that would require a very great expense, or would you envisage a situation, for example, that the Feds did in 2007 where they provided electronically assisted voting for vision-impaired people at selected polling booths, notified the key organisations and did some general advertising? Would you like the technology at every polling booth or at selected but notified polling booths?

Ms GIVEN: Ideally we would like it at all polling booths, but we understand the cost issue.

The Hon. Dr PETER PHELPS: My second question goes to the unsound mind argument which has been raised. Is your argument that there should be no categorisation of people who have insufficient mental capacity to understand it or is it simply a matter that you would like a professional assessment rather than an amateur assessment?

Ms GIVEN: Ideally we would like the section to be repealed.

The Hon. Dr PETER PHELPS: But does that not create a problem in the sense that the basis of voting is that a person will make an informed choice about who they want to vote for? If a person is not in a position to make that informed choice should they still be allowed to present at a polling booth and vote?

Ms GIVEN: I see your point. I think a professional unbiased assessment is preferable.

Mr GARETH WARD: Ms Given, thank you for your evidence so far. I have a disability as well: I am legally blind. So I appreciate many of the points you have raised on behalf of people with disabilities. In your submission you talked about section 120C of the Parliamentary Electorates and Elections Act and the issue of penalty notices. Do you feel the discretion of the commissioner was exercised to the extent that you were happy with? Do you think that there were still people who because of their disability were not able to vote and who were penalised under that section of the Act who should not have been?

Ms GIVEN: I do not know the exact numbers. I refer you to the commission for that information.

Mr GARETH WARD: Have you got evidence that that was actually occurring?

Ms GIVEN: We have anecdotal evidence from the disability community.

The Hon. PETER PRIMROSE: Ms Given, you may wish to take this question on notice. Are there lessons to be learnt from other jurisdictions that could assist those with disabilities to exercise their rights to vote? Are there any other jurisdictions that are doing particularly good things that we could cherry-pick from?

Ms GIVEN: I would like to take that question on notice.

Mr ANDREW FRASER: I wish to make a comment on that part of your submission that deals with access for people with disabilities. I do not know whether you were here this morning when the Electoral Commissioner gave evidence but he made the point that the Electoral Commission is seeking to ensure that all polling places are able to be easily accessed by people with disabilities. In your submission you say you want it close to transport routes. Unfortunately, in country areas—I come from Coffs Harbour—that is not always the way. In fact, as you would probably know, we do not have much transport in Coffs Harbour. The Electoral Commissioner is obviously on song with you, and I think the members of this Committee are as well.

CHAIR: Ms Given, in your submission and your opening address you made reference to technology-assisted voting. I take that to be a reference to the iVoting system that has been set up?

Ms GIVEN: Yes.

CHAIR: Did you use the iVoting system to cast your ballot?

Ms GIVEN: Yes.

CHAIR: Were you satisfied with it?

Ms GIVEN: I was very happy that I could vote independently.

The Hon. Dr PETER PHELPS: Would that have been the first time in your life that you have been able to exercise a secret ballot?

Ms GIVEN: Yes.

The Hon. Dr PETER PHELPS: After the 2007 elections Graeme Innes visited us. He said that he had left the polling booth crying because it was the first time in his life he had not had to get someone to fill out his ballot paper for him.

Ms GIVEN: Before that I had to get a family member because I did not want attendants to know how I voted.

CHAIR: Your submission suggests, self-evidently, that you would like that form of iVoting to be available on the day. Would you envisage that iVoting be available on the day only at polling booths or would the system be open more generally?

Ms GIVEN: Ideally more generally for people who cannot physically access a polling booth.

CHAIR: Would it be your view that in order to avoid a breach of section 24B it would have to be available not only at a polling booth but generally available at any computer point?

Ms GIVEN: Yes.

The Hon. Dr PETER PHELPS: Is physical access to polling places still a significant problem? Even with new building regulations and the move to new buildings, is it the case that because we are still using 100-year-old halls it is a significant problem across the State, or is it just an irritant at various locations?

Ms GIVEN: Yes, I would say it remains a significant problem.

CHAIR: Ms Given, would you like to make any further statement to us? I think you might have a bit of a win in terms of some of your evidence so far, but is there anything further that you would like to put to the Committee?

Ms GIVEN: No, thank you, Mr Chairman.

CHAIR: Thank you. Your submission has been very clear, as has been your evidence. All of us are most appreciative of you coming here to give your evidence today. I indicate to you that the Committee may wish to send you some additional questions in writing, the replies to which would form part of your evidence

and would be made public. Would you be happy to provide a written reply to any further questions that we might have?

Ms GIVEN: Yes.

CHAIR: If there are further questions the secretariat will contact you with that further material and tell you when we would like the answers returned to us. Otherwise, as I say, thank you very much for your evidence.

Ms GIVEN: Thank you.

(The witness withdrew)

SUSAN THOMPSON, Advocate, Vision Australia, sworn and examined:

CHAIR: My name is Trevor Khan. I am the chair of the Joint Standing Committee on Electoral Matters and I welcome you here today to give evidence. Because of the circumstances in which you have come here I am not certain whether you will have received the procedural information sent out to people with regard to the giving of their evidence and the hearing procedure? Do you have any questions regarding it?

Ms THOMPSON: I was here this time four years ago, so I am fairly familiar with it. I am actually here today in lieu of my manager, Michael Simpson, who was to be here today but he is sick. So there may be some information that he has got that I have missed.

CHAIR: If you have given evidence four years ago I suspect that everything is basically the same. I think we have done this the same way for about 100 years, so we will proceed. For the record could you please state your occupation and the capacity in which you are appearing before the Committee?

Ms THOMPSON: I am an advocate with Vision Australia on behalf of people who are blind or have low vision. My capacity here today is really I think dual-fold: One as an advocate on behalf of our clients and, two, as a blind voter.

CHAIR: Am I right that the submission that we have received is actually in your name?

Ms THOMPSON: It is. That is correct.

CHAIR: So in that respect do you wish to have your submission included as part of your sworn evidence?

Ms THOMPSON: I do, please, yes, because I make some reference to it in my comments.

CHAIR: That leads on to the next part. Would you like to make a short opening statement before the commencement of questions?

Ms THOMPSON: Sure. One thing that was not clear to me from memory was how long you would like me to speak for.

CHAIR: I think we will give you a degree of latitude, so away you go.

Ms THOMPSON: It sounds like we are early.

CHAIR: That is right. We do have a bit of time.

The Hon. Dr PETER PHELPS: That is why Trevor is being so magnanimous.

Ms THOMPSON: You can always fill the time available.

Mr ANDREW FRASER: But no more than two and a half hours.

CHAIR: I would ignore that comment.

Ms THOMPSON: Thank you, Mr Chair, and Committee members for this opportunity to speak not only on behalf of Vision Australia and its clients who are blind or have low vision, of which there are more than 100,000 people in that category as voters in this State, but also I speak to you, as I mentioned earlier, as a blind voter.

I note almost needlessly that it is enshrined in Australia's constitution that all people have the responsibility to vote but the right to do so in secret. I would also like to draw your attention to Australia's obligations under both the Commonwealth Disability Discrimination Act and the United Nations Convention on the Rights of People with Disability, whose committee is actually chaired by prominent blind Australian Emeritus Professor Ron McCallum. I note that the Disability Discrimination Act enshrines principles of dignity and equity and makes it unlawful for people with disabilities to be treated less favourably, and that would

include in the area of voting. The United Nations convention upholds that there is a right for all people to be able to participate in the democratic processes, and that of course includes people with disabilities.

When I addressed this very Committee four years ago I expressed both on behalf of Vision Australia and its clients and myself as a blind voter that people who were blind or whose vision is significantly low enough to not be aided by extra lighting or magnification of the printed ballot were actually being discriminated against. Secret voting is not having somebody read for you like a friend or a relative, it is not having a polling official do it for you, and it is not having two people on the other end of the phone in a call centre scribing for you, as happened in the 2010 Federal election, which was also very disappointing. It is being able to read the candidate names for yourself, review the names, review your choices and be able to do so in secret and without the intervention of anybody else. I note with immense pleasure the steps forward made by the New South Wales Government in the 2011 election in the form of iVote. I cannot begin to express how incredibly liberating it was to be able to use my computer with my screen reading software, cast an independent vote, verify what selections I had made as in reviewing them and to be able to complete this totally under my control and in privacy. In addition, of course, I had the advantage of not having to battle the crowds and cluttered streets on election day to actually go and cast a vote.

Vision Australia is of the view that it is also a real advance in thinking to have broadened iVote to include more than just people with disabilities, that is, including members of the public who were, for example, out of the State or not within 20 kilometres of a polling booth. We firmly believe this has two significant advantages for the future of independent voting for people who are blind. Firstly, because it is mainstream rather than a specialised disability service, it surely must enable economies of scale. Secondly, it provides people with a dignified way of participating in a process and feel included because it is a mainstream process and not a disability-specific one. The second issue I want to address today is the two forms of voting available with iVote. Is there anyone who is not familiar with those?

The Hon. Dr PETER PHELPS: I am not.

Ms THOMPSON: iVote included two forms of access. One of those was to use your computer with screen reading technology, which basically speaks out what is on the screen. The other one was to use a telephone system, which enabled you to see the keypad in sort of a similar way to things like—

The Hon. Dr PETER PHELPS: Electronic banking?

Ms THOMPSON: That is correct, thank you. And even just those IVR systems where you press 1 for this and 2 for that, but it had a little bit of a difference in that the 2, the 9, the 1 and the 5 kind of acted as arrow keys similar to what are on the computer, and everything was spoken to you in a clear human voice. So you could navigate the candidate names, review the candidate names, select the candidate names, review your selections, all just by using a simple telephone interface. While the Electoral Commission did an immense amount of work and a terrific job with the computer interface to iVote, it was still inherently a very visual layout, which means that for someone who is blind using a computer, it needed somebody with a high level of skill in using the adaptive technology. So I think it actually locked out a lot of older people who are not familiar with computers but are familiar with telephones. That is why the telephone option was so incredibly important. I think that hopefully gives you some bit of a feel for that.

Vision Australia is concerned at the possibility that the telephone option may not be included in future elections, and that will, as I have hopefully indicated, be quite discriminatory to that older group of people. The other important factor that I would like to raise is broadening the use of the iVote system, including the telephone interface, such that the more often that it is used in the more elections it is used, the more economies of scale there are, the more people will take up the system and everybody is happy, to put it bluntly. So we were quite disappointed to see in the Clarence by-election that the telephone interface to iVote was excluded. Given that a lot of those rural areas have a high population of older people—and as I mentioned the telephone option would be much more suitable for older people who are blind—that effectively again discriminated against them and locked them out of a secret, independent verifiable vote.

So Vision Australia is of the strong view that we congratulate the Government on the incredible advance that iVote is but very much urge the Government to include both of those interfaces in future elections, including local government elections. We are aware that obviously the New South Wales electoral Act does not necessarily include local government elections, but certainly the New South Wales Electoral Commission does

have some involvement in local government elections and could utilise this same technology for those elections. I think that probably concludes my words, and I am happy to take any questions.

Mr GARETH WARD: In your submission you noted there was a low level of awareness of the iVote system. What suggestions would you make to improve awareness amongst low vision and blind people so that they can ensure that they know that this technology is available and that they can get access to it and use it?

Ms THOMPSON: To backtrack a little, I think one of the issues perhaps with this previous election was that while the commissioner had been doing a lot of behind-the-scenes work on developing iVote the actual legislation to enable it was almost kind of a last hour thing. I am pretty sure that is right. It was very late in the process, the enabling legislation. So I am thinking that provided iVote is used again by the time the next election comes that part of the problem will be somewhat alleviated. But to answer your question more specifically, I think that perhaps assisting organisations that provide services to blind people to get the word out would certainly be helpful. A lot more media coverage would be helpful, mainstream as well as things like Radio for the Print Handicapped. I guess those are the main two options—even perhaps making local members more aware of it so they can encourage their constituents to use it.

Mr GARETH WARD: That is a good idea. In terms of the web interface, when you were using it, or anyone else you know who may have been using iVote, were you aware of any program problems in browsers not necessarily expanding the size of the text, for instance, in the case of low vision people sufficiently or other programs that might not have worked or connected with the software? Are there any instances you can identify?

Ms THOMPSON: I do not think that we have got any feedback to that extent. Although I would not like to categorically say, because we do not service every single person in New South Wales, obviously.

Mr GARETH WARD: Of course, yes.

Ms THOMPSON: But I am not aware of any specific issues that came up.

Mr GARETH WARD: Are there any other jurisdictions you know of that might do it better in any sense, and do you have any suggested improvements?

Ms THOMPSON: The first answer is no. I think iVote was absolutely unprecedented because it had both of those options and because of the work that was put into the web interface for those people who did use it. I guess a lot more people with other disabilities than blindness probably preferred the computer. But for our constituency it was the phone, definitely. The feedback we got was the phone, including should I say from Emeritus Professor Ron McCallum and the Disability Discrimination Commissioner, Graeme Innes, who both used the phone system and would also both be, I would think, very disappointed if it went away.

Mr GARETH WARD: Yes.

Ms THOMPSON: So I guess in terms of improving it—and please let me know if I have not answered your question—I think that the important thing is just to retain the phone voting system. If that goes away, that will be a degradation, but I do not have any other specific feedback or ideas on actual improvements.

Mr GARETH WARD: That is fine. Thank you very much.

CHAIR: Was any explanation given to your organisation, if it was asked, as to why phone voting was not available during the Clarence by-election?

Ms THOMPSON: I might have to take that question on notice. I am not entirely sure whether we got an explanation, if we did.

CHAIR: Right. Did you seek an explanation?

Ms THOMPSON: I am sure that we did. My manager, who is not here today, has been much more across that than I have. But I am certainly happy to take that question on notice.

The Hon. Dr PETER PHELPS: In relation to raising awareness, would Vision Australia have distribution lists? Is it a membership-based organisation? Would you have access to direct communications from Vision Australia to blind and vision-impaired people?

Ms THOMPSON: We have a list of clients. We have a database of clients. With the 2011 election, we did attempt as large a ring around of clients as resources permitted and discovered there was quite a low awareness of it by quite late in the piece.

The Hon. Dr PETER PHELPS: Do you believe that with additional resourcing you could, if you like, get a greater turnout of blind and vision-impaired voters from your own efforts?

Ms THOMPSON: Yes, I would think so. Certainly some assistance from the Electoral Commission or the New South Wales Government to actually do a ring around or mail-out, or probably an audio CD mail-out—

Mr GARETH WARD: That has been done before, though, has it not? I mean, I have seen tapes come out from the Australian Electoral Commission [AEC] giving instructions to blind and vision-impaired, but I have not seen that from the State Electoral Office [STO] though. That might be something that we should take up with the commissioner later this afternoon. I have seen those tapes. I know what used to be the Royal Blind Society, which is now Vision Australia, used to produce a client newsletter on tape in cassette form.

Ms THOMPSON: Yes. We actually do have a new edition or version of our client newsletter that is starting to increase its subscription.

The Hon. Dr PETER PHELPS: Did you use the headphone arrangement at the Federal election of 2007 whereby you turn up to a polling booth? I note a head nod.

Ms THOMPSON: My apologies. I forgot about the transcript.

The Hon. Dr PETER PHELPS: That is okay. Did you personally prefer to turn up and vote using the headphones, or using your vote from home?

Ms THOMPSON: I personally prefer to do it from home. Interestingly, I have sought opinions on this matter. I think while some people think that voting is one of these get-out-in-the-community kinds of activities, in my experience people just want to get out and get it over and done with in a dignified, independent, secret way.

CHAIR: Yes, absolutely.

The Hon. Dr PETER PHELPS: Could you just elaborate a little on not so much the problems but the bits you did not like about the internet voting arrangement? Was it simply that the attempts to navigate around the electronic ballot paper on-screen were more difficult than using the telephone? Is it a problem that could be fixed by a better laying out of the electronic ballot paper over the internet?

Ms THOMPSON: I think there are a few contributing factors. I personally use the computer and I think I was a rarity, but I just decided to do it because it was a challenge. But that is me personally. I will come back to your actual question in a minute. However, a lot of our older clients, and even our younger ones of the two systems that I just mentioned, certainly found the phone an absolute breeze. In terms of the difficulties with the web interface system, one of the difficulties and challenges for the commission in programming the system was that they wanted it to look exactly like the print ballot, which, from my minimal understanding of the look of a print ballot, is very columnised.

The Hon. Dr PETER PHELPS: Yes.

Ms THOMPSON: It is an inherently visual layout.

The Hon. Dr PETER PHELPS: They tried to replicate it?

Ms THOMPSON: That is right. I am not entirely sure whether that was related to the legislation. I suspect it was more about the fact that people who were used to doing it in print would find it more familiar. Does that answer the question?

CHAIR: Yes, certainly.

The Hon. PETER PRIMROSE: What consultation, if any, has there been between Vision Australia and the Electoral Commission? It would seem to me that ongoing feedback may be something that would be really valuable to them.

Ms THOMPSON: During the development of the system, we had a lot of consultation with the commission. They engaged us a lot as well as many of our clients and other users.

The Hon. Dr PETER PHELPS: Was there a post-election follow-up, though? The only way you really see a system in action is when it goes into action. Were you requested to do a post-evaluation?

Ms THOMPSON: I am fairly sure it was the commission themselves. The commission did actually engage consultants to conduct some telephone research after the event.

The Hon. PETER PRIMROSE: This may already be in place, I do not know, but would a more formal client consultation by the commission following an election with people who have disabilities generally be a valuable thing so that you could provide ongoing feedback directly?

Ms THOMPSON: Any sort of consultation is always valuable. The commission has a disability reference group that meets roughly annually, but I guess the downside of that is that you cannot get into too much of the nitty-gritty about how this particular screen did or did not work, or the actual minutiae of using the system when somebody is blind.

CHAIR: I ask this with regards to your experience with iVote. My understanding is that at the present time it allows you to exercise a vote but does not provide any link, for instance, to party sites or the like that allows you to gain information on preferences and the like.

Ms THOMPSON: You have hit on one of the things I raised in our submission, obviously, and that is things like how-to-vote cards that give you that information. Certainly, when I would imagine a sighted person is making their vote and they come across a candidate's name against a party, they might refer to their how-to-vote card at the time to see what the preference is. Would that be right?

CHAIR: That is probably almost inevitably the case.

Ms THOMPSON: That is definitely information that is not available to us as people who cannot read print. I noted last time and again in my submission this year, given some of the other requirements of the commission in relation to the how-to-vote cards, I do not think that it is very much of a stretch to include, "Do you provide this in an alternative format by Braille, particularly audio or electronic?"

CHAIR: I am starting to wonder, if we look at the iVoting system in terms of the telephone link, how one would provide the equivalent of a hyperlink for that. Are you aware of anywhere where voter preference information is provided in a phone voting system?

Ms THOMPSON: I am not highly technical but I imagine it would not be too much of a difficulty to program in there—say you press the 9 key—I am trying to be apolitical here—and you get down to John Brown and the system at some point says, "For further information on this candidate or its party's preference press 9", for example. I do not imagine programmatically it would be all that difficult.

CHAIR: I guess that is right.

Ms THOMPSON: And it certainly would be a very good way of getting that information on demand without having it burbling at you when you do not want it.

Mr GARETH WARD: As someone who has visual impairment I actually do not agree and the reason I do not is that like any other political party you have to get the information out there. People with 20:20 vision get it either through the mail or on polling day. I would in any other ordinary circumstance get that information the same way through the Internet or through other means. Do you think that there is the potential to be given

almost an unfair advantage, in some sense, to political parties by going through that process? It just does not sit right with me.

Ms THOMPSON: There are two things that I would say to that: One is that one of these days the political parties are going to be hit with a disability discrimination Act complaint that they did not provide their information in an accessible format. Two, there is a lot expected of you in order to do a whole lot of preparation before you go and do a vote if you do it the way you are suggesting. If you were able to program something—and this also comes down to the question of improvement and I did not think of it when the question was asked—but if you were to include some kind of an option which allowed you to press 9 or whatever the number is for further information about a particular candidate or the party preferences, that would be a way where you did not have to go pre-armed with all the information. Does that make sense?

The Hon. Dr PETER PHELPS: I think what Gareth is trying to get at is perhaps that this is more a duty of the parties themselves to outreach better to blind and vision impaired people, to make their own websites more accessible—

Mr GARETH WARD: Absolutely.

The Hon. Dr PETER PHELPS: —to provide how-to-votes because they already provide how-to-vote PDFs for people already.

Ms THOMPSON: Which at this stage are not accessible.

The Hon. Dr PETER PHELPS: That is exactly right. Whereas what you really need is the parties themselves to move to a situation where blind and vision impaired people can go to their website and rather than having to download a PDF they could, for example, download whichever electorate they are in and find out the preference order for that particular electorate?

Ms THOMPSON: Yes.

The Hon. Dr PETER PHELPS: I am just loath to try to impose a government solution when really the parties should be doing it themselves.

Ms THOMPSON: I actually agree with the principle of what you are saying. I think though that certainly the commission could at the very least do some facilitating. I personally tend to lean more on the side that they will not do it unless they are made to.

The Hon. Dr PETER PHELPS: They will do it if there is a political advantage for them.

Ms THOMPSON: There is that.

The Hon. Dr PETER PHELPS: And with 100,000 voters across New South Wales I am pretty sure that after this testimony feasibility studies will be conducted by at least two parties sitting at this table.

Ms THOMPSON: If we could get to a situation where parties and candidates did it without argument I would totally agree with you.

Ms THOMPSON: Did that answer the other question?

The Hon. Dr PETER PHELPS: Gareth, is your question answered?

Mr GARETH WARD: I think so, yes.

Ms THOMPSON: I would like to stress again that the broadening of iVote to include the phone system we do believe is absolutely vital.

The Hon. Dr PETER PHELPS: At the last Federal election the "phone in and have your vote recorded by someone else" system, I certainly opposed within the confines of the Liberal Party federally because I believe the earphones system was much better. Could you put on the record how bad it is, please? I do

not want to lead the witness but if you would care to bag it, I would be very happy to have my prejudices justified.

Ms THOMPSON: Despite some arguments by the Australian Electoral Commission that it is secret—

The Hon. Dr PETER PHELPS: It is not.

Ms THOMPSON: —insofar as the person doing the scribing does not know who you are, it is not secret.

The Hon. Dr PETER PHELPS: That is absolutely correct.

Ms THOMPSON: The general public would not accept that as secret.

The Hon. Dr PETER PHELPS: No.

Ms THOMPSON: It is not independent, it is not self-verifiable and it is certainly, in my view and the view of many of our clients, not dignified.

The Hon. Dr PETER PHELPS: It is a second-rate system, is it not? I think the witness has already stated her position.

CHAIR: Evidence is devalued by leading the witness.

The Hon. Dr PETER PHELPS: And it was only instituted because it was a cheaper option?

Ms THOMPSON: That is correct.

The Hon. Dr PETER PHELPS: It was a sop to the disability community because they did not want to pay the full amount of having the option of having to have the earphones at polling booths?

Ms THOMPSON: That was only because the enabling legislation for the 2007 election, as I understand it, did not enable them to do it again.

The Hon. Dr PETER PHELPS: No, it was done as a trial for that election but there was no reason why it could not have been continued.

Ms THOMPSON: I guess what I was meaning by that was the fact that it was a trial and it was not ongoing legislative enabling—

The Hon. Dr PETER PHELPS: It was certainly our intention to have kept it ongoing.

CHAIR: You are giving evidence as well, are you?

The Hon. Dr PETER PHELPS: I just like to correct the record.

CHAIR: One thing we can correct the record on is that you indicated that the Government was to be congratulated on introducing the iVote.

Ms THOMPSON: Absolutely.

CHAIR: It is fair to say that you are congratulating the former Labor Government on introducing the iVoting system.

The Hon. PETER PRIMROSE: I think congratulating the Parliament and the disability community on having pushed it.

Ms THOMPSON: Except to say I did read the second reading parliamentary speech and I got very much a sense from that that it was a bipartisan acceptance.

The Hon. PETER PRIMROSE: It was the Parliament that made it.

CHAIR: Do you want to say anything further before we finish?

Ms THOMPSON: I made a little error a minute ago when I said broaden iVote to include the telephone system. I meant broaden iVote including the telephone system.

The Hon. Dr PETER PHELPS: Is it your understanding that that will be available for local government elections?

Ms THOMPSON: It is my understanding that it probably will not be and it is made worse by the fact that now the commission has also given councils the option to conduct their own elections, which then further reduces the economies of scale.

CHAIR: I think the problem is that at the present time it is actually a legislative restriction in terms of where iVoting can be used and I do not think it extends to matters under the Local Government Act.

Ms THOMPSON: But if it is there it is able to be deployed.

CHAIR: I anticipate that this Committee will hold an inquiry after the local government elections and no doubt that will be an opportunity.

Ms THOMPSON: Good, we will see you again then.

CHAIR: You might be back. Thank you for appearing before the Committee today. The Committee may wish to send you some additional questions in writing and indeed I think you have taken one or two on notice. The replies that you give will form part of your evidence and will be made public. Would you be happy to provide written responses to any further questions that Committee members may ask?

Ms THOMPSON: Certainly.

CHAIR: Thank you very much for coming along today.

Ms THOMPSON: Thank you for having me.

(The witness withdrew)

DIGBY HUGHES, Policy and Research Officer, Homelessness NSW, affirmed and examined:

CHAIR: Do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Mr HUGHES: No.

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

Mr HUGHES: Yes, I would, thank you.

CHAIR: Would you like to make a short opening statement before the commencement of questions?

Mr HUGHES: Yes, thank you. Firstly, I thank the Committee for inviting me along here today. Homelessness NSW, to give you a brief overview, is the peak body representing about 180 services around New South Wales who work with people who are homeless or at risk of homelessness. One of the issues that our members keep telling us is important is the right to vote, because people who are homeless are without most things in life. They are largely without a house and without power and influence. Voting is part of how we influence society. We think it is an important issue. Our members keep telling us that it is an important issue for the people they work with.

We think some of the things in our submission are simple and easy to undertake. The first I refer to is the New South Wales Electoral Commission website. I suppose I am bemused at the fact that when I go to the website and to the search part of it and I type in the word "homeless" there is no information available. However, if I then type in the words, "elector with no fixed address" it comes up. I am pretty sure that most people who experience homelessness would not think of typing in, "elector with no fixed address"—

CHAIR: Or "no fixed abode"?

Mr HUGHES: That is right, "no fixed abode" or any words along those lines. We believe it would be fairly simple to get the New South Wales Electoral Commission in line with other electoral commissions, the Australian Electoral Commission and the Victorian Electoral Commission, who are fairly well leading in this area. Domestic violence is a major tragedy around our State—particularly our rural members inform us. One in particular in Narrabri told me the story a number of years ago of a woman who did not turn up to vote on the day because in Narrabri there are two polling places on polling day. She was escaping domestic violence; there was an apprehended violence order but she was pretty sure that that would not be followed with due diligence by the perpetrator. With only two polling places it made it very easy for him and one of his mates to sit outside a polling place all day—it is only 10 hours, 8.00 to 6.00, not a huge commitment—to observe her, to follow her and find out where she was living. She made the point to me that one of the things that should be available to people who are escaping domestic violence is to honestly answer on their postal vote or pre-poll vote that they are escaping physical violence or some wording along those lines.

One of the other pluses for us as an organisation, and for the Government as well generally, would be to get some data. On polling day in 2010 10,000 people in New South Wales used that as a reason not to vote as opposed to 2015 when it was down to 8,000. So it might give us some sort of evidence base that we are making some headway on domestic violence across our State, which would be a plus on a range of government initiatives. The other thing about domestic violence is that the Electoral Commission has a lot of people who turn up to work on polling day, and that is the one and only day they work. The commission brings in a lot of temporary staff—I do it myself these days. We are not asked whether we have an apprehended violence order against us or anything along those lines. I know that will not prevent a determined perpetrator or alleged perpetrator but it gives a bit of weight. So, we ask that that be included in the questions you have to answer when you are applying for employment. I do not think it would be overly difficult.

The third area is probably about identification. Obviously a lot of people who are street homeless do not have a lot of identification with them. They minimise their belongings. That is one of the issues they have when trying to obtain accommodation or talking to Centrelink. If everybody is forced to produce identification on voting day it will be an issue. Two days ago I was talking to a colleague who works for the Department of Veteran Affairs. We were talking about war widows. It is not an issue of homelessness, but often when a person becomes a war widow her husband has run her entire life or the business side of her life. The department has

one or two cases a year where a woman turns up who does not have a bank account, who does not know how to bank and who does not have a driver's licence or a passport. I was quite amazed when he told me this. It reminds me that there are some people in our society who, for a hundred different reasons, would not have a form of identification with them.

The Hon. Dr PETER PHELPS: Can I just take you up on that? Are you saying—

CHAIR: No, the witness is giving his opening statement. The Hon. Dr Peter Phelps will get his chance in due course.

Mr HUGHES: The final thing is interesting. On 21 July Victoria is having a local government by-election in the Melbourne district. The Victorian Electoral Commission has produced a two-page flyer to go around to the local homelessness services. It states, "Homeless should not mean voteless" and, "How you can work with the Victorian Electoral Commission to ensure your clients get on the role and get to vote." This is probably a fairly easy thing to do. We just ask that the New South Wales Electoral Commission look at that as an idea. If we can do it in Victoria, there is probably no great reason why we cannot do it in New South Wales either. Thank you very much.

CHAIR: Approximately how many homeless people would there be in the area of the city of Sydney?

Mr HUGHES: Are you talking about rough sleepers?

CHAIR: We will talk about rough sleepers.

Mr HUGHES: In the central business district there are about 400 to 500.

CHAIR: Would it be fair to say they are reasonably concentrated in the centre of the City of Sydney area?

Mr HUGHES: I am talking very much about the city of Sydney area.

CHAIR: Do you have any idea what the numbers would be in centres like Wollongong and Newcastle?

Mr HUGHES: I did not bring those figures with me but I can provide them. I will take the question on notice. We are eagerly awaiting the results of the 2011 census, which should be out in November this year we are told, so we will finally get data that is more up to date than 2006, which I am sure will be welcomed by the Government and us.

The Hon. Dr PETER PHELPS: The vast majority of people who are homeless are not in fact rough sleepers, are they?

Mr HUGHES: Correct. No.

The Hon. Dr PETER PHELPS: They are basically sofa jumpers. They go from place to place for a range of purposes. The majority of those people would still presumably have some sort of identification, whether it is a Medicare card or a benefits card or a transport card, or something of that nature. They would still have that sort of identification in the overwhelming majority of cases if not universally, would they not?

Mr HUGHES: I believe the majority would, but just because a person is not a rough sleeper—around 28 per cent of the homeless population for New South Wales are people living in boarding houses. As the Committee is probably well aware, some of those boarding houses leave a little to be desired when it comes to forms of accommodation, so it is an itinerant population that moves in and out. I have been to a few with clients over the years and they are never asked for ID. It is a case of, "My name's Bob" and in they go.

The Hon. Dr PETER PHELPS: But presumably those people would have to have some sort of identification. Presumably they would have a Medicare card but, even assuming that, they would have to have some sort of Centrelink documentation. The question is: How is it being paid for?

Mr HUGHES: They would have some form of identification or capacity to obtain it but they might not have it at all times.

The Hon. Dr PETER PHELPS: That is true but they certainly have access to it.

The Hon. PETER PRIMROSE: Forgive my naivety on this point: How do homeless people vote—say someone who is homeless for a considerable time? In order to vote they need to be on the electoral roll. How do they get on the electoral roll and what are the provisions in terms of having a residential address to identify, for example, what electorate they vote in?

Mr HUGHES: They have a few options available to them. They can go on the role under "no fixed address" or they can enrol for where they have a friend or family. They can use someone else's address or a locality where they feel they have belonging. That is what is currently allowed.

The Hon. PETER PRIMROSE: Given that—I know this will probably be a guess—what proportion of the people you deal with would be on the electoral roll as opposed to those who would not be?

Mr HUGHES: I would not even want to hazard a guess on rough sleepers.

The Hon. PETER PRIMROSE: It would be a considerable proportion.

Mr HUGHES: A considerable proportion; I suspect the majority.

The Hon. Dr PETER PHELPS: My understanding was that the Australian Electoral Commission at a Federal level prior to 2007 made a concerted effort, especially in the capital cities, to try to get those people to register as itinerant electors. I am not sure how successful that was. Because of the dual roll arrangements they would have come onto the State roll as well. Given the turnover, you do not really know at this stage?

Mr HUGHES: No. We could all bandy around a guessed figure I suppose.

Mr ANDREW FRASER: You have probably already answered this question in part. We get a lot of itinerant workers on the North Coast and people who live the lifestyle. There is one fellow who comes into my office quite regularly so we can ring and have the guardianship people send him extra money. He travels from Melbourne to Cairns and back about three times a year. Firstly, I do not think he would have an interest in voting and, secondly, how do you identify where they would vote? What would their electorate be? I know you said that some people have an attachment to a particular area. In this fellow's case I think he has an attachment to Coffs Harbour because that is where we make his phone calls for him, but he probably does that all the way up the coast. Whilst I can understand someone who is sleeping rough being disadvantaged, where do those genuine itinerants who never stay in a place longer than maybe a picking season, or in this bloke's case as long as he feels like it, fit into the scope of things? How do you give them an opportunity to vote? To me the relevance would be a Senate vote or an upper House vote, not necessarily a lower House vote.

Mr HUGHES: The easiest way to get them involved in the system is to do what they are doing in Victoria and for the Electoral Commission to work with services in the field. We have only 350 funded specialist homelessness services across the State—it is not as if there are thousands of them—so we should get information to them. Coffs Harbour is a larger regional centre. A workshop could be run there. That is an offer that is available in Victoria—to run a workshop in an area and train staff to do the work with these people. Whether the person then decides to vote or even whether they want to go on the roll would be largely up to the individual. As for people who are genuine itinerant travellers, that is an interesting question. I do not know the answer to that.

Mr ANDREW FRASER: I do not either. Some Australian Bureau of Statistics for the North Coast a number of years ago showed that the population of my electorate turned over every four years. We had a turnover of 25 per cent. I have not looked at it of late but it is the situation on the North Coast, and in Queensland I suppose, that these people live the alternate lifestyle. The old adage is that if you are going to be on the dole you may as well be on the dole on the North Coast. They do not relate to any one particular area.

Mr HUGHES: No, but you have an excellent service in Coffs Harbour—the Coffs Harbour Accommodation Brokerage and Housing Support Service, Meena Johnson service, and it could be that working

with Meena during Homeless Persons Week in a couple of months time might be an opportunity for us to start getting information out to people experiencing homelessness.

The Hon. PETER PRIMROSE: You mentioned earlier that people felt their safety might be at risk if they approached a polling booth, particularly those affected by domestic violence. What additional provisions do you think might need to be included in legislation or in practice to improve the situation?

Mr HUGHES: I think it is more practice than legislation. It is basically for the Australian Electoral Council to keep the continuity of the forms across the country and for the council to have information on its forms about pre-poll voting or postal voting and the fear of domestic violence. A person, male or female, can then pre-poll vote or request a postal vote and have it sent to them. I would hazard a guess that there are probably a number of people in that situation who postal vote now but tick any other box because no-one ever comes round and checks. If you tick the box that says you are going to be travelling on the day of the election no-one comes around and physically checks that you have ticked the right box. It would enable people to be honest, which is not a bad thing and, secondly, it would get the data. It would show over a period that we might be making a difference in relation to domestic violence. If we are not, we should know that as well.

The Hon. PETER PRIMROSE: Is that a concern in New South Wales at the moment or are you saying that that is working?

Mr HUGHES: No, it is not working. It is a concern, especially in small regional communities. Narrabri has only two polling places. There must be a number in the Coffs Harbour electorate whereas in some towns there is only one polling place.

Mr ANDREW FRASER: Woolgoolga has one.

The Hon. PETER PRIMROSE: What should happen?

Mr HUGHES: A person who has an apprehended violence order against a spouse or partner could get their form and tick where it says they need a postal vote. They are happy for the form to come to the house and be sent back but they do not want to go to the one and only polling place in Woolgoolga because—

The Hon. Dr PETER PHELPS: They are going to get thumped.

Mr HUGHES: Or be followed or whatever.

Mr ANDREW FRASER: As a local member I have experienced people with that problem coming in and requesting that something be done about it. Normally they will either postal vote or pre-poll vote. Normally they will slip into a pre-poll one day and just use an excuse of being away. It is an issue.

CHAIR: Is the definition "fear for physical safety" or "a person in need of protection being the subject of an apprehended or domestic violence order"?

Mr HUGHES: Probably the latter would be the more accurate description. The wording can be worked on later, but it is a matter of trying to get the electoral commissions around the country to acknowledge it as an issue.

Mr ANDREW FRASER: Police officers and others do not have to put their names on a roll.

Mr HUGHES: And judges, and we get silent voters turning up. There is a whole range.

Mr ANDREW FRASER: It is a similar principle?

Mr HUGHES: It is similar, yes.

The Hon. PETER PRIMROSE: Mr Chair, again, that might be something we need to raise directly with the Electoral Commissioner?

CHAIR: Yes. Thank you for appearing before us today. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Mr HUGHES: Yes.

CHAIR: The Secretariat will contact you if there are any further questions and in relation to the questions you have taken on notice.

(The witness withdrew)

MARK NEEHAM, State Director, Liberal Party of Australia, New South Wales Division, sworn and examined:

SIMON McINNES, Finance Director, Liberal Party of Australia, New South Wales Division, affirmed and examined:

CHAIR: Thank you for appearing before the Committee to give evidence. Before we proceed, do you have any questions concerning the procedural information sent to you regarding the giving of evidence in these proceedings?

Mr McINNES: No.

Mr NEEHAM: No.

CHAIR: In what capacity are you appearing?

Mr NEEHAM: As State Director.

Mr McINNES: As Finance Director.

CHAIR: Only one submission was forwarded to the Committee. For that purpose I will ask the next question of you, Mr Neeham. Do you wish that submission to be included as part of your evidence today?

Mr NEEHAM: That is correct.

CHAIR: Would either of you like to make a short opening statement?

Mr NEEHAM: I will start. Thank you for the opportunity to appear before the Committee. I appeared before the Committee probably two years ago now and things have changed quite considerably both in the direction of this State but also in terms of the legislation with which we have to operate. Thank you for the opportunity to talk about the conduct of the 2011 State election campaign. As you see from the letter we sent the Committee, we focus on two areas. One is the automatic enrolment of voters and the other is the Election Funding, Expenditure and Disclosures Act. I will touch very briefly on the automatic enrolment and then I will hand over to Mr McInnes who can give a summary of the disclosures area. It is a longstanding held view of the Liberal Party that we are opposed to automatic enrolment. We do not believe that it is the right of the State to put people on the register. That is a personal responsibility and an imposition on them. We believe in small government and it is the responsibility of the individual to enrol to vote, not the State to interfere in those matters. That is pretty much it in a nutshell. I am sure you will have more questions. Rather than make a long statement, I am keen to answer any questions. I will hand over to the Finance Director who will expand on the disclosure side.

Mr McINNES: We believe the Election Funding, Expenditure and Disclosures Act 1981 is a cumbersome and contradictory piece of legislation. It tries to cover matters for State election and local government election campaigns, and in doing so brings everything down to a lower level and makes matters even more confusing. The differences between a State election campaign and a local government campaign are significant and trying to have a one-size-fits-all legislation is not working. Appropriate disclosure thresholds and caps for State elections are significantly different from what is required for local government elections. It is the New South Wales division's position that part 6 of the Act should be split into two parts, one covering State elections and one covering local government elections. We believe the Act needs a complete overhaul to ensure that it is relevant and workable both from the political parties and candidates point of view and for election funding. Again, I will not go into detail regarding the areas we have put into our submission. We leave it open to you to ask us specific questions about those areas.

Mr GARETH WARD: Mr Neeham, your submission suggests that the disclosure requirements, donations and expenditure caps should apply to parties rather than individual candidates. How might this assist parties better administer their election campaigns and comply with the relevant parts of the Act?

Mr NEEHAM: Would you mind if I get the Finance Director to answer that?

Mr GARETH WARD: Sure.

Mr McINNES: I suppose it really is just a reflection of the current situation. Candidates who are endorsed by the Liberal Party may campaign in their own name but all their fundraising and expenditure goes through the Liberal Party itself. Having different caps and expenditure requirements of candidates versus the party simply makes it a confusing matter. As you may well be aware, with the expenditure cap during the capped expenditure period there is a cap that applies both for party expenditure and also that the candidate can also incur. The reality is that we conduct the campaigns for a lot of those candidates. Having that sort of segregation does not work.

Mr GARETH WARD: What about the capacity to ensure accountability of individual candidates, would that retract from that capacity in some way?

Mr McINNES: I actually believe that it would strengthen it if we were able to have more control at a party level.

Mr GARETH WARD: As do a number of submissions from parties, you contend that the degree of vouching required for the Election Funding Authority is too extensive and that the time delays in respect of payment of public funding is too great. Would you outline these factors and how they have impacted on the capacity of candidates of the Liberal Party to manage their expenses?

Mr McINNES: You must remember, of course, that the bulk of the people that help during an election campaign are volunteers; they are not paid employees of the party. The Liberal Party is proud of its tradition of conducting campaigns at a local level. We have a lot of issues in gathering the material that is required for disclosure purposes and lodging it in that short time frame between the end of a financial year and when the disclosures are required to be put in. During the last State election campaign the Election Funding Authority required copies of artwork or material for every single piece of election campaigning—that included t-shirts, balloons, every single piece that they needed. I do not believe that they need all of that. A detailed invoice specifying what it is should be sufficient. All we are doing is creating an administrative nightmare. First, it makes it difficult for the Election Funding Authority to enforce and, secondly, something that is difficult to enforce in essentially what is a voluntary party.

Mr GARETH WARD: In your view, how might the Election Funding Authority improve its administration of claims for public funding for future State elections?

Mr McINNES: There are two ways. First of all, when they do a review they should conduct it like an ordinary financial audit. They should take sample sizes, they should look at the systems that are in place within the political party to determine the size of their sample and then test those samples. Secondly, I also believe that the provision of a detailed invoice from a supplier should be sufficient. I do not believe it is necessary to provide the actual samples that go with it, one being that those invoices can be emailed or faxed in whereas physical samples are quite difficult to collect. My understanding is that the current practice of the authority is that when it conducts a review it tests every single transaction. That does not happen out in a commercial practice and it should not happen in a government organisation either. It is simply increasing the amount of bureaucracy that we already have in place. It is every single transaction and we are talking about thousands of transactions.

Mr ANDREW FRASER: Do you think the caps on spending et cetera are too low or is it the donations and who they come from?

Mr McINNES: I believe that the caps on spending are appropriate. I think that the categories of expenditure which are capped and, therefore, also attract public funding are a bit limited. The caps on donations, which only applies to State Government—it is a bit of a contradiction in terms that we have no caps on local government election campaigns but we have caps on State Government campaigns. Probably the area that does need a cap does not have a cap. By today's standards \$5,200 is not much. You are not going to buy influence for \$5,200, given that we have multimillion-dollar election campaigns.

The Hon. Dr PETER PHELPS: You are not going to buy any influence for \$5,200; not in the Labor, Liberal, Nationals or Shooters parties. You are not going to buy anything. Do we need the belts and braces approach of not having any donations from individual builders or people who are in the building industry or liquor industry? It does seem to be an appendix, an anachronism, if you have the quantum cap, to have this subsidiary and arbitrary cap on the employment choices of the people who make the donations.

Mr ANDREW FRASER: In relation to the definition of "developer" as a small town builder who has a display home, do you have an opinion on that?

Mr NEEHAM: As Mr McInnes has pointed out, there is confusion in the Act and it is not clear. In terms of Dr Phelps' question in terms of the prohibited donors, the Government has legislated that you have to be an individual on the electoral roll to donate. Our view as a party is that should be satisfactory. There should not be subcategories within that of people who can and cannot donate to a political party and therefore take part in the democratic process. It is not legal for a director or officer of a property development company to donate to a political party in New South Wales but it is all right for a brothel owner. Where do you draw the line? If you are on the electoral roll you have a vote in the election. If you are on the electoral roll you should be able to donate to a political party.

The Hon. Dr PETER PHELPS: A capped donation?

Mr NEEHAM: We are not arguing about the capped donation, but if you are a voter you are a voter and there should be no bar on it.

The Hon. Dr PETER PHELPS: Further on that—

CHAIR: Let him answer the question.

Mr NEEHAM: In terms of the question from Mr Fraser about the developer issue, it is very confusing. People want to make a donation and they say they are not a developer and others say they are a developer. It is only when you accept that donation and there is an issue with your disclosure that a determination is made on are they a developer, yes or no. By that time it is too late. There are issues. One example I give within the Liberal Party is that of a senior office bearer at State and Federal level who is prohibited in New South Wales from paying to come to an event because of the job that her husband does.

The Hon. Dr PETER PHELPS: Her husband does?

Mr NEEHAM: Yes. This person sits on our national executive, our State executive and they have held leadership positions for many years but cannot legally pay and attend a Liberal Party event in New South Wales.

Mr McINNES: What the Act tried to encapsulate with the property developer definition was honourable but in practice it is difficult to enforce. The definition of a "property developer" talks about somebody who makes regular development applications with the aim of selling or leasing the land for profit. We had a situation in one of the electorates where a farmer who had land which was getting close to a city that was expanding had an opportunity to develop that land and sell it for a profit. He had never developed before. This was the first time he had put a development application in and therefore probably did not fit the definition. It was not a regular application but he was a property developer and should have been captured.

Whereas you have other examples of large organisations that by the nature of their organisations will develop sites in which to put up a minor part of their business who are captured by that legislation. It is quite unworkable. I am led to believe that the Election Funding Authority tried to develop a form or a process in order to better define who a property developer was and their legal advice came back and said that unless you are the chief financial officer [CFO] of that organisation you are not going to know that. Someone who is a branch manager, or whatever it may be, would not be able to do that.

The Hon. Dr PETER PHELPS: The real problem is the imperfect knowledge that political parties have. If someone writes a cheque for \$5,500 you know you can reject that because it exceeds the cap. You have perfect knowledge in relation to that. You do not have perfect knowledge in relation to an individual, especially what a non-party individual's private investment arrangements may be or the private investment arrangements of their spouse, father, mother or children—that is the fundamental problem of the existing arrangements is it not?

Mr McINNES: It is. Can I add, because we have one piece of law that tries to cover both local government and State elections, there is a difference between what is appropriate and you wish to control at a local level; that is not necessarily appropriate at a State level. When you talk about a cap on donations, a \$5,200 cap on donations at State level could be increased to \$10,000. At a local government level I would think it is appropriate and I think should be lower than the \$5,000 level.

Mr GARETH WARD: You mention in your submission about part 6 being separated. Is there anything else?

CHAIR: Let the witness finish the answer.

Mr GARETH WARD: I thought he had finished, sorry.

The Hon. PETER PRIMROSE: My question relates to the part of your submission concerning social media. You suggest that there needs to now be incorporated into the Act guidelines for the use of social media platforms for campaigning. Could you suggest some of the things the guidelines should include?

Mr NEEHAM: That was part of our later submission. We are talking about authorisation and traceability. In particular, if we produce a brochure or direct mail piece—any party—it has our authorisation, agent or party's name and the printer's address. It is very different when it comes to social media, especially if it is Twitter or Facebook, where anybody can put up an account or page that purports to be me or any member of the Committee and make statements that the individual would not be aware of.

CHAIR: You find out about them later.

The Hon. Dr PETER PHELPS: When a journalist rings you.

Mr NEEHAM: It is instant and out there. We do not want to change what social media is achieving, but at the same time in a political campaign there has to be an ability to trace it back to a political party or candidate.

The Hon. PETER PRIMROSE: Are there any instances in other jurisdictions that you can point to where it is working?

Mr NEEHAM: There is not. We have not researched other areas. It is something we are aware of and thought we would raise.

The Hon. Dr PETER PHELPS: I am reticent about that sort of thing. Could you give me an example of the problem in that regard that you are seeking to correct? Is there a specific instance where something happened that drew your attention to the matter?

Mr NEEHAM: There have been minor events. It is the potential for a bigger issue. If there were two candidates in a campaign and one was to make a statement about another that was defamatory it would be very clear—printed in the media—and you would be able to trace it. On social media you can make a defamatory statement and it cannot be addressed because you would not be able to trace it.

Mr GARETH WARD: If it was on Facebook or twitter.

Mr NEEHAM: Somebody could establish that Facebook page.

The Hon. Dr PETER PHELPS: Facebook administration could pull something, because they have pulled stuff in the past.

The Hon. PETER PRIMROSE: I am genuinely asking the question. I imagine that there would be jurisdictional issues in relation to Commonwealth legislation.

The Hon. Dr PETER PHELPS: It is like the internet; you could set up a defamatory internet site in Uzbekistan.

Mr GARETH WARD: The publication rules still apply in the jurisdiction in which the subject offence was taken.

The Hon. Dr PETER PHELPS: It is a matter of proving who did it.

CHAIR: Is that not the problem with this whole exercise? In the lead-up to the last election there was a series of "The Bunker" YouTube clips put up by various groups, some of which may have been associated with political parties or factions of political parties. One would never be able to prove in most cases who had generated what looked to be quite professional and often humorous but defamatory pieces. How would you control that? It is in the nature of that technology.

Mr NEEHAM: We are not saying that this is what you should do; we are raising it as an issue for consideration more widely. I am aware of the YouTube clips.

The Hon. PETER PRIMROSE: We have all seen them.

CHAIR: I refer to automatic enrolment. To be honest, I think it is great. If 18-year-olds are encouraged by an election campaign to vote, what you are suggesting is that they are disenfranchised from the vote and in a sense that is an acceptable outcome. Is that correct?

Mr NEEHAM: I disagree about their being disenfranchised.

CHAIR: Well, they are not voting, so that is disenfranchisement.

Mr NEEHAM: To me that would suggest that they have been on the roll and have been taken off.

Mr GARETH WARD: They might not know they are on the roll.

Mr NEEHAM: My concern with automatic enrolment is that these people can be put on the roll and then informed by text message. Our view is that it is an individual's responsibility to register to vote rather than the State's responsibility to put them on the roll. We do support campaigns being run by the Electoral Commission to encourage registration and getting as many people registered as possible. However, we have an issue with people being put on the roll and then being informed afterwards.

CHAIR: The groups that are less likely to enrol are the young, non-English speakers, the poor and the Indigenous.

Mr NEEHAM: That may be true. In terms of new immigrants, when I became an Australian citizen the first thing I was given after my certificate was an electoral enrolment form. Everybody was told not to leave until they had completed it and handed it in.

CHAIR: I suspect that you do not fall into any of the categories I have nominated.

The Hon. Dr PETER PHELPS: He is an immigrant.

Mr GARETH WARD: With smart enrolment is there not the possibility that people could be enrolled and not know about it and then potentially not know the responsibility?

Mr NEEHAM: That is a concern. I regularly have people tell me they have sent me a text message or an email and I have not received it. If that is the way they are notified that they have been put on the roll and they do not receive a text they cannot respond. I repeat that we believe it is the individual's responsibility to enrol; it is not the role of the State to enrol them.

Mr ANDREW FRASER: All kids who get to year 12 are informed. Normally there are Electoral Commission representatives at end-of-year functions. They are informed and given an enrolment form and told about automatic enrolment. Most of the kids think that is good.

CHAIR: We have people in this place who have difficulty remembering to fill in pecuniary interest forms.

The Hon. Dr PETER PHELPS: I suggest that many young people would have no reticence filling in a proof of identity card to enter a pub.

Mr ANDREW FRASER: Or forging one.

The Hon. Dr PETER PHELPS: I think there would be a much greater take up if electoral enrolment were merged with proof of identity for pubs.

CHAIR: I again appear to be in a minority.

The Hon. Dr PETER PHELPS: Not for the first time. Is there anything in your dealings with the Election Funding Authority or the Electoral Commission that you think can be improved? Are you happy with the level of non-election dialogue between the bodies and yourselves outside the electoral period and during the electoral period?

Mr NEEHAM: We have a good relationship and communication channel with Colin Barry. I have never had any issues; he has always been helpful to me and the party in terms of requests. However, some of this legislation is very unclear. The funding authority and commission cannot give a definitive answer and it could only—

The Hon. Dr PETER PHELPS: You should get your own legal advice.

Mr NEEHAM: —be tested in the court. We have a good relationship and good communication channels with the commissioner and his staff.

The Hon. Dr PETER PHELPS: What about the Election Funding Authority?

Mr McINNES: I also believe that our relationship with the individuals at the funding authority is quite good. They talk to us on a regular basis. However, I have had two major objections over the past 12 to 18 months. First, the authority has been quite proactive in writing to donors informing them about their obligation to lodge donor disclosure forms. I have had a lot of complaints from donors that the letters have been quite aggressive. It has been a guilty until proven innocent scenario, threatening them with jail terms and large fines even before the disclosure return is due. That is slightly exacerbating the situation and making donors feel that donating to a political party is the wrong thing to do and that it is somehow dirty, which it is not. I am trying to think of a nice way to put it, but I think that the reviews it has conducted of political parties—and I have some friends with whom I cycle from other political parties and they have been treated the same—

CHAIR: From The Greens?

Mr McINNES: Yes. The reviews have been quite pedantic. They require substantiating documentation for a \$20 or \$30 electoral expenditure item. That is not worth the paper it is written on. That is going too far. There does not seem to be a lot of common sense being exercised sometimes when it comes to this review.

The Hon. Dr PETER PHELPS: One final thing, in your submission you also made comment about the difficulties of payment of nominations. What is the specific problem there, can you only pay it in cash or cheque or was there some problem with electronic lodgement of payment for nomination fees?

Mr McINNES: Nomination of a candidate?

The Hon. Dr PETER PHELPS: Yes.

Mr McINNES: Yes, it is cash or bank cheque. We would prefer to do an electronic transfer.

The Hon. Dr PETER PHELPS: Is that an administrative thing or is that something from the Act itself?

Mr McINNES: It may be legislative, I do not know.

The Hon. Dr PETER PHELPS: It is something we can ask them when they come back.

Mr GARETH WARD: We were discussing earlier today the issue of the submission of how-to-vote cards before election day. From your point of view as State Director, are there any issues that you have with that current process. Do you think it is necessary or unnecessary? Could it be done more electronically? Do you have any issues there?

Mr NEEHAM: In terms of working with the current system, it is a lot of work to register those cards a week out, and all parties register variations on how-to-votes for each electorate. It does present issues that we have had at a Federal level in New South Wales, particularly at the last Federal election, where, in the seat of Macquarie, the Liberal Democrats pretty much carbon copied our how-to-vote card but rather than preferencing the Liberal Party it was the Labor Party. In all but preference flow, it was a carbon copy of our how-to-vote card. That could not happen at a State level, it would not be able to happen because of the preview instruction for how-to-vote material. I suppose the issue with registering not just the how-to-vote cards, if any piece of election material that we have used over the preceding 12 months or five weeks happens to be distributed on polling day, that also has to be registered, and if it is not you are in breach of the Act. And there is a lot of material that all parties and candidates produce over the campaign period and good, well-meaning volunteers may simply hand them out.

Mr GARETH WARD: So do you think that provision is necessary or not?

Mr NEEHAM: We have no objection to continuing the registration of how-to-vote cards but there may need to be a bit more flexibility with material that has gone out during the campaign.

The Hon. PETER PRIMROSE: I think the earlier questions did not relate to registration, it was when the material became available for inspection.

Mr NEEHAM: And although as the registered officer of the party it is my job, or the job of my deputy registered officer, to register that how-to-vote material, the only way for it to be viewed or checked is on polling day at the divisional returning office by somebody appointed by the candidate, not by myself as the registered officer at a central point. I am sure my colleague Sam Dastiari would equally support the ability for the party centrally to be able to do, at one point, all the how-to-votes for the whole State.

CHAIR: And should that be on polling day or at some earlier time?

Mr NEEHAM: If it is registered and accepted by the Electoral Commission seven days before, then it should be available to view seven days before.

Mr GARETH WARD: In relation to polling day itself, there was also talk about the rush at polling booths, and we were talking about the Australian Capital Territory and Tasmania with Antony Green earlier about how they have restrictions about where you can hand out how-to-vote material. Is there any merit, in your view, in having similar restrictions in New South Wales so that there are some restrictions on the handing out of how-to-vote material on the day, or do you think that the current more laissez faire system is appropriate?

Mr NEEHAM: I think we have a good system. I would not like to see the banning of how-to-vote cards on polling day. I think it is part of the process. In 99 per cent of polling booths, the relationship between the various parties and volunteers is good and there is a good team spirit. It is only that 1 per cent where occasionally we have a bit of an issue to deal with. On the whole, I think it is a key part of the campaign. It is a lot of work to get all your volunteers in every polling booth but I do not think we should limit campaign activity on polling day.

CHAIR: Do you have a view with regard to the iVoting system?

Mr NEEHAM: I think it is a good system. In terms of regional areas, it is probably more relevant for the National Party but in terms of assisting the visually impaired or people who are away, pretty much anyone could really register for it, metro or regional. So I think it is a good system and we should continue to use it moving forward into the next campaign.

CHAIR: Do you have any view as to the distribution of postal vote applications by candidates?

Mr NEEHAM: I would not want to see a restriction on political parties being able to distribute postal vote applications.

The Hon. Dr PETER PHELPS: And receive them.

Mr NEEHAM: If they meet the requirements of the Electoral Commission.

Mr ANDREW FRASER: And receive them?

Mr NEEHAM: And receive them, absolutely.

Mr ANDREW FRASER: Do you have a view on having a voting period, rather than a voting day, to ease congestion on polling day? We have pre-poll booths open, so once they are open would you have an objection to people who are otherwise engaged? There are pretty strict rules laid down now but some may work in the morning and have kids at sport in the afternoon and they would be able to go and vote prior to the election day itself.

Mr NEEHAM: I don't think so, no. The pre-poll system is good and one or two, depending upon the size of the electorate, a few booths in the electorate but I would not want to see a whole range of booths, like the polling day operation, any earlier than polling day.

CHAIR: No, I do not think that is what Mr Fraser is suggesting.

The Hon. Dr PETER PHELPS: What we were looking at earlier is a removal of that restriction for limited reasons as to why you can claim a pre-poll vote, to allow for people to come in earlier and essentially not having to fabricate an answer.

Mr ANDREW FRASER: Not that anyone would do that.

Mr NEEHAM: I think if you want to vote before polling day you should be allowed to vote before polling day.

Mr ANDREW FRASER: The Electoral Commissioner this morning and in his 2011 report talks about the modernisation of the Court of Disputed Returns. Do you have an opinion on that?

Mr NEEHAM: We have never had cause to use it in the last few years, so I do not, no.

Mr ANDREW FRASER: The commission has argued in its report of 2011 that ideally primary legislation should set out the essential electoral principles, leaving the more detailed operational matters to the commission and, as necessary, subordinate legislation. Do you have any opinion on that?

Mr NEEHAM: I would like to see, in black and white, legislation for the rules by which we operate election campaigns.

CHAIR: Thank you for coming in and for coming in earlier. It gave us more time and we are grateful for that. The Committee may wish to send you some additional questions in writing. I do not think you have taken anything on notice until this point. The replies will form part of your evidence and will be made public. Would you be happy to provide a written reply to any further questions that we may have?

Mr McINNES: Yes.

Mr NEEHAM: Yes.

CHAIR: The Secretariat will be in contact if that is the case.

(The witnesses withdrew)

COLIN ANTHONY BARRY, Electoral Commissioner, NSW Electoral Commission, and

IAN WILLIAM BRIGHTWELL, Director Information and Technology, NSW Electoral Commission, on former oath:

BRIAN DECELIS, Director Funding and Disclosure, NSW Electoral Commission, sworn and examined:

CHAIR: Welcome, and thank you for coming back, Mr Barry and Mr Brightwell. Before we proceed, Mr DeCelis, I hope you have been given the essential screed that deals with the procedural information relating to the giving of evidence in the hearing process. Are you comfortable or do you have any questions with regard to that procedure?

Mr DECELIS: No. I received it and I have read it and I am comfortable with it.

CHAIR: We do not have to formally introduce again Mr Barry and Mr Brightwell but we will identify that they are at the table as well. There is no further submission that we need to rely upon but, nevertheless, because you have returned, and particularly as Mr Brightwell has heard a good deal of the evidence that has been given during the day and perhaps, I suspect, by one source or another, Mr Barry, you have found out various things that have been said, would you like to make any introductory remarks before some further questions are put to you?

Mr BARRY: I think Mr DeCelis and I have to confess that we have not heard a lot because we had a meeting with the Election Funding Authority and we are dishing out some money. I do not want to make any statement.

CHAIR: Mr Brightwell?

Mr BRIGHTWELL: Not at this point, no.

The Hon. Dr PETER PHELPS: I have a question on something that was raised by the previous witness in relation to the payment of nomination amounts using only cash or bank cheque. Is there some legislative impediment to electronic funds transfer in the twenty-first century?

Mr BARRY: There is a legislative impediment. I think that is something that if we have not made mention of in our formal submission about the review of the quaint nineteenth century provisions it is something that certainly when I come back I am happy to talk about.

CHAIR: Apart from the acceptance of nomination fees are there any other circumstances that you are aware of in the Act that require payment by cash or bank cheque?

Mr BARRY: I think it is only the nomination provisions.

The Hon. PETER PRIMROSE: Just following up some of the things that have been raised today: Vision Australia raised the issue about seeking the continuation of iVoting by telephone. They indicated that they found that particularly valuable, particularly for older people, and were concerned that it had not been used in the Clarence by-election and were seeking some sort of assurance that it would continue to be available at future general elections.

Mr BARRY: Can I make a couple of comments about it and then I will ask Ian to make some further comment? I am aware of what Vision Australia would like but there has recently been a meeting, that I think Ian attended, of the peak bodies to do with disability groups, both representing us and the Australian Electoral Commission, and we raised this very issue. Ian will be able to give some more robust numbers to this, but in round figures over 60 per cent of the cost of running iVote was associated with enabling people to vote on the telephone. We were able to, I think, provide an equally good service to people at Clarence through an alternative human being at the end of the phone, and Ian can talk about how it worked in terms of protecting the secrecy of the vote because there were two people at the end of the phone—if, indeed, it has not already been covered.

Those costs are quite significant, and in fact we did a survey of all of the people who participated in iVote at Clarence, and Ian is going to comment on it, but at a very high level it was very, very well accepted by

the actual vision-impaired voters. I know that Vision Australia made that submission but I think that submission pre-dates the recent meeting that we had with disability groups about iVote and the telephone voting system.

The Hon. Dr PETER PHELPS: Could you elaborate a little on the Clarence system? Was that system comparable to what the Australian Electoral Commission employed at their 2010 Federal election—in other words, two officers at the end of the phone who would manually record a vote based upon the telephoned instruction of the visually impaired person?

Mr BARRY: Can I hand that one to Ian?

Mr BRIGHTWELL: In the sense that it was a human interface, and yes there were two officers in that case, yes it was different in some respects in that the Federal operation did require the person to attend the DRO's [divisional returning officer] office to place their vote rather than being a remote vote. So there were similarities. That is all I can say particularly in regard to that. The only thing we differed in was that rather than recording it manually the operator recorded it into iVote as an internet vote. So the information they received was only the pin and the iVote number. They specifically did not have any information about the identity of the individual and the operator was not privy to any information so they did not know who was at the end of the phone other than that they had a valid pin and iVote number.

The Hon. Dr PETER PHELPS: The problem is, as Ms Given I believe raised earlier, they still have to give their voting instruction to another person, which essentially, she felt, and I know others, compromises the secrecy of their ballot in a way that being able to key in your vote directly did not.

Mr BRIGHTWELL: That is certainly an argument that I have had put. The human interface over the technology interface intrinsically means that another human being knows the vote from the person at the end of the phone, albeit that they do not know who that person is. Could I just relate our experience between the State election using the technology interface and the human interface because it really is one of those things where we found at Clarence we had five voters.

At the State general election there were 218 people who used technology-based phone voting, using the tone dial. The number of people who registered by phone I think was 376. So we actually had people who registered by phone—where they would have had a call centre operator helping them register—who did not choose to use the DTMF [dual tone multi frequency] dialling to actually place their vote. We suspect that quite a few of them tried and failed. What we found was that many of those people who registered by phone actually used the internet to vote. We suspect there were—and I think there was some evidence given earlier today about this—difficulties in using a phone to navigate particularly our upper House ballot paper—for those who tried, congratulations. It is not an easy task to use the phone to navigate that upper House ballot paper. At Clarence we offered a human interface. Now at the State election we had five people who voted using the phone interface at Clarence, a few months later when we offered the human interface we had 25.

The Hon. Dr PETER PHELPS: What was the cost of the 2011 telephone component of iVote, in rough figures?

Mr BRIGHTWELL: As the commissioner indicated, we have a rough percentage of 60 per cent. The total spend of iVote was in the area of \$3.6 million and 60 per cent of that is going to push you close to \$2 million. It is a hard thing to split out—in other words, I do not think you can say take \$2 million out and you could do the web voting.

The Hon. Dr PETER PHELPS: No, but you can work it out roughly.

Mr BRIGHTWELL: But you certainly could say that the phone voting component is a very onerous part of the project and has quite a lot of complexities and risk attached to it because of the nature of it. In rough terms, to actually design the phone voting system it was eight A3 flowchart sheets of complexity.

The Hon. Dr PETER PHELPS: Except that was not the evidence given by Vision Australia. Vision Australia said that they had received information and that the people who contacted them actually preferred the phone voting system to the internet.

CHAIR: Dr Phelps, I think you are talking at cross-purposes. The witness is talking about the complexity of designing the system.

Mr BRIGHTWELL: Yes. The only thing I can reflect on is the numbers and the way that people elected to vote. Certainly I do not believe we have any significant indication of preferences one way or another for that group, but we effectively do know the outcome of what people chose to do by their decisions.

The Hon. PETER PRIMROSE: Mr Barry, you have indicated that you feel that things may have moved on following consultation with the broader range of groups servicing people with disabilities and their representatives. It probably would be of assistance to this Committee if there was continuing consultation, otherwise we will basically be left with two contradictory points of view.

Mr BARRY: I do not want to disguise the fact that certainly there is a section within the vision impaired community who, if it was their decision, would prefer the telephone voting system. I do not want to mislead the Committee to suggest that some people may have changed their position. However, one of the things that I took into consideration in changing the arrangements for Clarence was to test out and see how it did work at Clarence and how would it work by offering a cheaper, different sort of approach, because I was mindful of the fact at the time that the Government was contemplating introducing iVote for local government elections. Now even if we were running all of the local government elections, which the Committee knows we are not, we would be looking at 5,000 candidates. There is no way known we could roll out a telephone voting system with 5,000 candidates; it is just too complex. Unfortunately, we have compromised on some parts of what the vision impaired community would like. But the tests that we did after Clarence—this is my view, and I accept the fact that I am not vision impaired—were very positive by the people who used it. They said they were more than satisfied with the fact that their vote was a secret vote inasmuch as they were giving their vote to a person who did not know them.

The Hon. Dr PETER PHELPS: The argument against that is those people would have been self-selectors. They are people who would have said, "I am comfortable with this method". It is not unusual for people who have self-selected themselves as comfortable with that method to then say they were comfortable with that method.

Mr BARRY: Of course. Indeed, they were not given another choice.

The Hon. Dr PETER PHELPS: The other choice is to go into the electoral polling booth with a family member rather than a stranger as a greater degree of secrecy?

Mr BARRY: I am not trying to guild the lily here on this. I am being absolutely frank with the Committee. There is a section of the vision impaired community who will push to have the full telephone voting option. What we have to face are the realities of life. We cannot roll that out at local government elections. It is absolutely physically, technologically impossible for us to do. Where do we go? We either have something that we could roll out at local government elections—yes, it is a compromise—if the Committee can come up with some other approach to it, terrific. If we continue to roll out a full telephone voting option at the next State election, yes, the peak bodies will be well and truly satisfied but we will never be able to implement it at local government elections. We will either have to have the Clarence model or no model. That is the dilemma that you face.

The Hon. PETER PRIMROSE: I am conscious of the time. A number of other points were raised by other witnesses and I want to quickly ask you about them. For example, Antony Green spoke of the ongoing concern and cost associated with having such large Legislative Council ballot papers and the difficulties of not being able to scan those in. He suggested the idea of having party only ballot papers, which would be much smaller and available for those people most of whom simply want to vote above the line. Can you comment on that?

Mr BARRY: I can. The New South Wales upper House ballot paper is a challenge. It is a challenge for us to print it. In fact, there is only one printer in New South Wales who can print it. What Antony is raising means when a person comes into a polling booth they will have to be asked, "Are you going to vote above the line or below the line?" We will still have to have all the ballot papers there because we do not know how many people will be—well, we sort of know.

CHAIR: Some 98 per cent will vote above the line.

Mr BARRY: What is the reason? We get the result for the upper House in—

Mr BRIGHTWELL: Under 10 days.

Mr GARETH WARD: Antony Green was making the point that he wanted to know on election night.

CHAIR: No, that is not the case at all. That is misstating his evidence.

Mr GARETH WARD: I thought that is what he was saying.

The Hon. Dr PETER PHELPS: I do not think that Antony was actually suggesting the choice of two options. I think he was suggesting a single ballot paper for the upper House but only with the party or the lead candidate's name listed.

Mr BARRY: I do not have any particular view on having a ballot paper that might have only the parties on it and you do not reproduce all the candidates. But what you are doing is limiting peoples' options on how they might want to vote. For example, they might not like the lead candidate of a particular party but want to vote for some of the others. I mean, what are we trying to achieve? What is the problem we are trying to address?

The Hon. Dr PETER PHELPS: I think he raised the issue of large numbers of people just giving up: Seeing the size of it, giving up and simply lodging blank ballot papers because they could not make head or tail of it.

Mr ANDREW FRASER: His suggestion was to have two ballot papers. Are you voting above the line or below the line? Above the line, bang, and it is the same as your other one. Below the line, well—

The Hon. Dr PETER PHELPS: I do not agree with that for the same reason as the commissioner. That is, you should not be asking people those sorts of things about voting intention.

The Hon. PETER PRIMROSE: I would need access to *Hansard* for my other questions. They relate to the very specific questions from the Computing Research and Education Association. There were three questions. I am wondering if the secretariat or you have those, Mr Chairman.

CHAIR: I do not, but I know one of the questions was what the process was for selecting the particular technology that was arrived at in terms of—

Mr BARRY: Selecting the service provider?

CHAIR: No, the question was more basic. Instead of, for instance, being capable of printing off a PDF of the vote form and being able to put it in an envelope and send that off, why did we go for a model that involved voting online? I think that was the question that was essentially being put, and it may be that that was the legislation.

Mr BARRY: I will pass that one Mr Brightwell.

Mr BRIGHTWELL: In Mr Radcliffe's evidence earlier today he indicated that there was a document prepared around May 2010 which was tabled in Parliament. That was a feasibility study and that actually addressed a lot of the thinking. It was in response to legislation that required that document to be prepared. The document in itself required specific objectives to be achieved and in particular telephone voting was contemplated within the consultation we had with blind and low vision. Some of the models that were discussed earlier today in evidence really did not fit within the frame, that was addressed in the original legislation and the subsequent document that we prepared as a feasibility study, because it did not address the objectives.

CHAIR: Is the iVote standard still in a sense a secret document?

Mr BRIGHTWELL: I think there is quite a myth that has grown up around the iVote standard. I actually instigated developing, for the convenience of our project team, a document which we called the iVote standard. It never actually matured to what one might call a standard. It was more of an internal guideline to provide us with a reference point and it actually became, I would have said, redundant once we got to the point of actually moving into the project design and evaluation phase. In a sense it reflected a summary view of the

sort of issues we had to consider, but it never was completed as an external document and it did not undergo what I would consider rigorous review.

We would be quite keen to prepare a document that does reflect the project detail and publish it; it is just that at the time we did not have such a document requirement in the legislation. We prepared and submitted the documents that were required by the legislation. Our position has been that the other internal documents were in various states as a project document but had not been prepared for the purpose of external release.

The Hon. Dr PETER PHELPS: How could firms know what to submit if there was not a standard by which they could be judged?

Mr BRIGHTWELL: The standard document was, as I said, subsequent to the tendering process. It was developed, if you like, in parallel during that phase but it was never used in any way for the tender. I find the word "standard" probably a little bit of an overstatement for what it was. The tender documents had in them a statement of requirements and, as I said earlier in evidence, those were publicly available documents. They are probably still on the internet on the government tendering website. They set the framework for procurement. There were elements in the tender documents that were captured within the standard, along with other concepts and ideas that we were working on through the project. But it took some of the information out of the tender and brought it to a slightly lower level for implementation purposes.

The Hon. Dr PETER PHELPS: So the request for tender documents would be only official documents prepared before tenders were submitted which, if you like, set what your objectives were?

Mr BRIGHTWELL: And then subsequent to that and prior to elections we prepared a procedures document which was a requirement of the legislation and we published that. So those would have been the two major public documents, and there were other presentations, submissions and reports that we prepared.

CHAIR: The third question related to that, I think, is what was the evidence that you have available to you that verifies that the vote, in a sense, is correct?

Mr BRIGHTWELL: The evidence in terms of voting verification, at the time of tendering we asked for a system which had verification. The term "verification" at any point in time if you ask any person could mean a range of things. What it wound up being in terms of verification for the purpose of the system we procured was verification that the vote had actually passed through the system and been available to the count. The provider did not provide the elector with any evidence of the preference markings on the ballot paper being in any certain way; it just indicated it had got to the point where it was going to be part of the count.

CHAIR: So what is the proof that there has not been some interference either by malfunction or by malfeasance with the attempt by the voter to cast their vote in a particular way?

Mr BRIGHTWELL: The processes by which the system was tested and in fact implemented was our main confidence for that particular aspect of the system. Can I say though that at the time of the tender and the actual receipt of the tender that was a normal and accepted approach. Technology being what it is, things moving forward, we are perfectly of a similar view to the CORE presentation—and we have stated so in our responses—that we would see a verifiable vote with preferences being verified back to the elector as something which we should have within the next general election operation of the system that would be consistent with the available technology and our abilities at that time.

Mr BARRY: I am not an IT person as you can appreciate, but I engaged PricewaterhouseCoopers, an international organisation, to bring to bear whatever resources they needed to satisfy me that the iVote system was robust, that it had integrity and it would pass muster to implement. Other people can come along and can I say you should have this, you should have that, and I am perfectly happy to open this whole discussion up to ask what do you as a Committee and what does Parliament want me to do? I followed the law and the law required me to engage an auditor to audit the system before it was implemented and after it. I engaged PricewaterhouseCoopers, an international organisation, who put their reputation and name on a piece of paper.

I did not go around and canvass a whole lot of other people who might be self-appointed experts in the entire voting process to come and put their name to it. If the Committee thinks that I should do something else in the future—as Mr Brightwell has said, we are not wedded to everything and every aspect of the iVote system that we rolled out in 2011. But we think that certainly it had integrity. I had people sitting in my room, there

must have been 30 of them, technological people, people from all over the world, coming and saying, "Colin, this is okay for you to press the button and go ahead." This is not just Mr Brightwell and me sitting in my office saying, "Yes, look, let's go." This is PricewaterhouseCoopers. If you think that is not an appropriate organisation, then I am more than happy to take advice as to where you think we should go in the future.

CHAIR: I do not want you to become defensive but some issues have been put to us and we are simply investigating those issues.

Mr BARRY: Absolutely.

The Hon. PETER PRIMROSE: I would like to think that other than being defensive, we are talking about things that are prospective, and that is what I take this line of questioning to be. That is our job. Our job is to say that in relation to the legislation—as you know, legislation not only is black letter but also involves expectations—we are simply saying to you that matters have been raised with us quite legitimately by people who have been held out to us to have expertise in the field and it is appropriate for us to put to you those questions and seek a response.

Mr BARRY: And I do not disagree. In fact, one of the things I have said in some written responses, a number of the matters that have been raised, we agree with in the next iteration of the iVote project.

The Hon. Dr PETER PHELPS: Mr Radcliffe indicated that Everyone Counts was informed by its external assessors that there were some problems with the system, most of which they corrected and some of which they did not. Was the Electoral Commission informed of those problems?

Mr BRIGHTWELL: Mr Radcliffe's evidence, I think the word was "risks", that it was a risks register and there were risks that were open and there were risks that were closed. I think in evidence earlier today I indicated that the risks that were open were not risks to the electoral process that were immediately considered to be of significance.

The Hon. Dr PETER PHELPS: But did Everyone Counts inform you of those identified risks?

Mr BRIGHTWELL: The risks that were put together were risks that—we managed this in the risks register and it came from a number of sources, some consultants and contractors we engaged to actually audit the Everyone Counts system. So it was not Everyone Counts telling us; it was actually risks that we garnered through reviews and analysis by other consultants who were engaged specifically to do that task.

The Hon. Dr PETER PHELPS: In your contract with Everyone Counts do you have penalty provisions for systemic failure of that system? If so, have any of these penalty provisions been called into account by the end problem?

Mr BRIGHTWELL: The answer is the failure conditions as such were those which would apply to most normal contracts, which is failure to perform the purpose of the contract. The end provision (failure); which we defined in some detail in documentation which we provided to various parties—and it was given in evidence earlier today—was largely to do with fairly poor communications systems between our clients and the core system. That was the primary cause as we determined, and it was not within the terms of the contract to have actually identified and rectified that as part of the design. The specification in that area was not sufficient to hold the contractor in breach.

The Hon. Dr PETER PHELPS: Mr Hughes from Homelessness NSW raised a number of issues. One of them related to the issue of apprehended violence orders [AVOs]. He made reference to the fact that people working on polling places may be the subject of an AVO, particularly an apprehended domestic violence order, and that that is not checked. So that is my first question. Can you comment on whether that is the case?

Mr BARRY: Is the question: people who work as election officials, if they were the subject to an AVO, would we be aware of that?

The Hon. PETER PRIMROSE: Yes, would you be aware of that?

Mr BARRY: I do ask them if they have any criminal convictions—

CHAIR: Yes, but that is not a criminal conviction.

Mr BARRY: —but we would not ask them if they have an AVO.

The Hon. PETER PRIMROSE: The reason for that—and please take this on notice—is the issue particularly in country areas where there may only be a couple of polling places—

Mr ANDREW FRASER: Or one.

The Hon. PETER PRIMROSE: —or one and someone who might be working there could be the subject of an apprehended violence order in relation to someone who is expected to come and vote there.

Mr BARRY: That may well be but we have to be careful here. There are laws that we cannot discriminate against people in terms of employment. If they have an AVO against them if they are working in a polling place, how do we know? The AVO is against another person, as I understand it.

The Hon. PETER PRIMROSE: For a start, it would probably be illegal in relation to the working with children check, because people bring their children in to vote. I presume that is something that your staff would be subject to.

Mr BARRY: It is a complex area—

The Hon. PETER PRIMROSE: That is why I am happy for you to take it on notice. I am not trying to trick you. It is a legitimate question and it would assist us if we had a response.

Mr ANDREW FRASER: The issue was also raised on the basis of whether someone who has an AVO on someone else could be put on the roll or be allowed to vote in another form, rather than attending a polling booth in a small town, where it could be possible that the electoral official is subject to the AVO, or a spouse is subject to an AVO, and could just watch if the woman, say, is living in a refuge or at another address.

Mr BARRY: Certainly, they could apply to be a silent elector.

Mr ANDREW FRASER: Someone who has?

Mr BARRY: Has an AVO.

Mr ANDREW FRASER: Or has taken an AVO.

Mr BARRY: The person who has an AVO against another person could apply to be a silent elector and they could apply to get a postal vote if they wanted to. I just want to get it clear in my mind. So the question is: Do we ask people at the point of employment whether they have an apprehended violence order against them? I know the answer is no, we do not. The answer I will come back to you with is: Is it appropriate that we do that? That is why I think the Committee needs to provide some guidance on that point.

The Hon. PETER PRIMROSE: The second issue relates to, let us say, a person who has taken out successfully an apprehended domestic violence order. The issue was raised about the processes that they need to go through to obtain something like a postal vote. It was suggested to us that that is complex and may be something that needed to be made easier. That is the evidence. I am sure we can make that available as soon as *Hansard* is available so you can look at those comments.

Mr BARRY: We can comment on that.

CHAIR: I know that Mr Ward has a question but there are two more. One of them arises from questions by the Hon. Dr Peter Phelps that related to the iVoting system. I think Mr Brightwell was here when this question was put. Why is an informal vote allowed to be recorded on the iVoting system?

The Hon. Dr PETER PHELPS: Can I correct something I said? In fact, the Australian Electoral Commission [AEC] did allow for an informal vote to be cast. I do remember having strong arguments with the AEC about this but it appears from checking back on my own notes that the AEC did not agree with me.

CHAIR: Does that render this null and void?

The Hon. Dr PETER PHELPS: No. I still think it is an important question. If you can put in place a system that requires people to vote, and they are required to vote, and it makes clear in the Act under section 103 how a vote is given, why would there be a system in place which would allow you to, in effect, violate section 103?

Mr BARRY: I will not get into quoting bits of the Act because I do not think that will work. But I can say this. It is not an offence for a person to vote informally. Indeed, if you stop and think about it, how could you ever prosecute such a person, because it is a secret vote? You never know who they are. What people are required to do—and I am talking at a high level and I am quoting the Act—is attend a polling place and generally have their name marked off the roll. What they do between the time their name is marked off the roll and leaving the polling place is a matter for them. Ian and I had quite a lot of conversation when we established the iVote system around: Would we force people to cast a formal vote? It was not a decision that we made easily, but we came to the view that iVote should as much as possible replicate the options that people have in a polling place. But at least we put the step into the iVote—if I am correct, Ian—to warn people that if you are going to do this, you are going to cast a formal vote. Are you certain this is what you want to do? I think we put that step in.

Mr BRIGHTWELL: Absolutely. The wording was not quite that, but it effectively meant you were telling the elector that your vote would not count.

Mr ANDREW FRASER: It is more a warning.

The Hon. Dr PETER PHELPS: I will continue this dialogue through questions on notice.

CHAIR: That is right. There is one further thing that arises out of the evidence of Mr Neeham and Mr McInnes. I will put it in the context of their submission. This is the statement they make: "The Act should reflect the audit requirements of the Commonwealth Electoral Act. The EFA does not rely on the audit which is required under the Act and instead conducts a separate review despite the fact an audit has really been completed. The audit is an expense incurred by the party in complying with the Act. The Australian Electoral Commission does not require an audit; rather they conduct an audit themselves on an ad hoc basis." Why do you require the level of administrative detail in order for parties to obtain funding? I think that is the essence of what was being put.

Mr BARRY: I might ask Brian to comment.

Mr De CELIS: It is not particularly a straightforward answer, but in fact the authority does rely on the audit done by the registered company auditor because the authority does not receive all of the documentation and accounting and information that is held in the party's office that is available to the registered company auditor to audit. That is the audit that we rely on being done that we receive then—the documentation and the claim from the party. What the Act and regulations allow is the authority to conduct a compliance audit. We cannot audit, like a registered company auditor does, the records of the party. We do not have that access. What we audit is a compliance audit. We ensure that what we have is all the documentation, all the material, all the vouchering that is required by law for us to pay a claim. What we are conducting is a compliance audit. We go further than just the claim. We conduct further compliance with the law, which is to ensure that people appointed an official agent, that they opened the campaign account, and that they complied with other parts of the law beyond just the claim.

CHAIR: Sure. I do not think that really was the point that was being made.

The Hon. Dr PETER PHELPS: No, it was the minutiae. It is going down to every last balloon.

Mr ANDREW FRASER: The \$20 petty cash voucher.

The Hon. Dr PETER PHELPS: Rather than doing random selection, it is actually complying with the extent of every last balloon and every last T-shirt.

Mr De CELIS: What the Commonwealth has is an entitlements scheme, so they are not required to go down, as you said, to the nth degree. What we have is a reimbursement scheme. The Act requires that every cent

be vouched for in order for the authority to pay it. These are not requirements placed by me; in fact, not by the authority. They are in fact the interpretation of the law and it is in fact the way the authority is required to enforce it. In fact, we are getting reinforcement of that, if you like, from the Auditor-General's office that in fact that is the requirement that they expect from us also.

They have only just recently come to audit us. You would be aware that the audit function we have there really did emanate out of the last iteration of the joint standing committee, and it is the reason that we have these resources to do it. An undertaking we gave to that joint standing committee was that if you want to resource us in a way that we audit every single claim and every single disclosure and all matters of compliance, then we are prepared to audit to that extent. They resourced us to that extent. We now have those resources. That is the obligation we gave, and that is the undertaking that we are meeting.

But at the end of the day, we only complying with what the law requires. Our interpretation of the law, like any claim that any public sector agency receives, is that you do not do a random check, you do not check to some extent to make sure it may be fundamentally or in the most part vouched for. We are paying out public moneys here. The expectation and my understanding—and, I believe, the authority's understanding—of the law is that is the extent we are required to go to.

Mr ANDREW FRASER: What they are saying was: Why would not an invoice for balloons, marked paid, be enough rather than sending a sample of the balloon in as well?

Mr De CELIS: It is a requirement of the legislation.

Mr ANDREW FRASER: Okay.

Mr De CELIS: That is not quite or exactly right because what the law requires is that the material to be sent to us only applies to advertising material. If we deemed that balloon—and I believe it would be because it is carrying a—

Mr ANDREW FRASER: A logo.

Mr De CELIS: Fundamentally, it is an advertising. It is only in respect to advertising but the law—again, it is in the regulations—requires that the claim be substantiated by vouching for all that material. We have no discretion here.

The Hon. Dr PETER PHELPS: Do you think it is a good use of your resources, though?

Mr De CELIS: My answer would be that the joint standing committee in its previous iteration thought that it was because they funded us to that extent.

Mr ANDREW FRASER: He has driven the ball back to you.

The Hon. Dr PETER PHELPS: Touché.

Mr BARRY: One of the things that you have to just put on the table is that the parties are probably grappling with the issue that in the past the amount of money that they were getting out of the public purse was, you know, much, much less than what they are getting now. We are talking, you know, \$40 million of public money going to political parties. The irony of this is I think we are actually doing the political parties a service because they can be guaranteed. Yes, it might be a little bit longer and they have got to do a little bit more work, but they are not going to end up on the front of the *Telegraph* or the *Herald* about getting inappropriate money out of the public purse because we now are taking the responsibility of auditing so that the parties have a lot more confidence.

CHAIR: We will have to conclude the hearing because I know that the Hon. Dr Peter Phelps has to catch a plane. If he leaves, we are out of here. He is Mr Ward's Liberal colleague, and if he can persuade the Hon. Dr Peter Phelps to remain for a minute, we can proceed; otherwise, we will have to put it as a question on notice.

Mr GARETH WARD: I have two very quick questions.

CHAIR: No, you will get one.

Mr GARETH WARD: I will make it count. I want to say it, briefly, that I do not want you to walk away thinking in any way we are disparaging of iVote because the overwhelming response of people giving evidence here today was that it was a wonderful progression in our democracy.

The Hon. PETER PRIMROSE: They were very positive.

Mr GARETH WARD: Mr Barry, I think that you, as the Commissioner, and those with you should be commended for the work that you have done, particularly in relation to those people with disabilities. Vision Australia was very complimentary.

Mr BARRY: Thank you.

Mr GARETH WARD: Commissioner, if I were in your position I would have sought the best advice, as you did. I think you did absolutely the right thing. I think that anybody else in your position would not have done anything differently.

CHAIR: Gareth, you have one question.

Mr GARETH WARD: I know. I just needed a short preamble. Allegedly the Chair is meant to be on the same side as me in a number of senses. One thing that was raised was about making the software for iVote open source. Norway was the example cited where that is what happened and it is very transparent so that questions about the potential for voter fraud could be raised outside of the agency. This might be something that you should take on notice, but I thought it was very interesting that they had gone to that level. We here in New South Wales have not necessarily done that. I think that is a good question for you to come back on, but I thought it was a good point that was well made by people from the information technology [IT] sector.

CHAIR: With that, I thank you all again for attending.

The Hon. Dr PETER PHELPS: I am still here.

CHAIR: The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Mr BARRY: Yes, we would.

CHAIR: I thank you for coming back today. It has been most informative.

Mr BARRY: It is a pleasure.

CHAIR: The hearing is concluded.

(The witnesses withdrew)

The Committee adjourned at 4.50 p.m.