

REPORT ON PROCEEDINGS BEFORE

**JOINT STANDING COMMITTEE ON ELECTORAL
MATTERS**

ADMINISTRATION OF THE 2015 NSW ELECTION AND RELATED MATTERS

At Macquarie Room, Parliament House, Sydney on Friday, 5 August 2016

The Committee met at 9:00 am

PRESENT

Mr J Rowell (Chair)

The Hon. R Borsak

Mr A Crouch

The Hon. B Franklin

The Hon. C Houssos

Ms M Pavey

The Hon Dr P Phelps

The Hon P Primrose

Mr M Taylor

Ms A Watson

GEOFF ASH, Registered Officer, The Greens, affirmed and examined

The CHAIR: Today's hearing is an inquiry into the administration of the 2015 State election, and related matters. The Committee has agreed to make this hearing public. I welcome those in the public gallery today. I draw the attention of people in the gallery to the media guidelines available at the back desk. Before we proceed, Mr Ash, do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Mr ASH: No.

The CHAIR: In what capacity do you appear before the Committee?

Mr ASH: I am the registered officer of The Greens, a State registered political party.

The CHAIR: Do you want to make a brief opening statement before we open up to questions?

Mr ASH: Yes, I will make a few comments. It would have been good if there had been a Greens Member of Parliament on this Committee. I feel that an important perspective would have been added to this Committee if a member of The Greens was on the Committee. The Greens are not a major party, as you know, and we are not a micro party; we are somewhere in between. We do sometimes provide a quite different perspective on various issues. I think that is unfortunate.

I will mention a few points from our submission. I draw the attention of Committee members to the recommendations at the beginning of our submission to this inquiry. The first recommendation is about proportional representation. For many years The Greens have been advocate of a Hare-Clark type system. I appreciate that this may be outside the terms of reference of this inquiry but any inquiry into an election that cannot look at the essence of the electoral system is, in The Greens view, sadly lacking. Our submission, and perhaps for future inquiries the terms of reference ought not exclude such matters—

The CHAIR: The Committee is happy to hear comments today on that matter.

Mr ASH: Thank you. Our submission shows a table about the number of seats won by major parties. It also shows that the number won was beyond what the vote deserved. It shows that the number of seats won by The Greens and others, including Independents, was below what the vote received by those parties and Independents deserved. I will not elaborate more. I am sure you are all fairly familiar with the arguments but, in short, it is our view that proportional representation delivers a more democratic election result.

Recommendation 2 deals with public servants contesting elections. The Greens have had a number of public servants as candidates in the past, and I am sure other parties have too, and they have all faced different situations in their employment. Some of them have been leaned on to take unpaid leave or leave without pay, which is a big ask, particularly for candidates who are running in support of upper House campaigns. They have no chance of winning yet they are leaned on to take leave. We believe there should be some sort of directive from the Government that its departments should not pressure employees who are candidates to take leave. There is more on all of these points in our submission and I will not go into the finer detail.

I turn to the iVote recommendations 4a and 4b. The Greens support the iVote, which will obviously continue to grow, but we think there need to be strong efforts to prevent bias in the presentation of the ballot paper on screen, particularly the upper House one, and also any potential security risks. In relation to the former, we suggest that the columns on the upper House ballot paper be rotated when they are displayed on the screen so that groups A, B and C on the Legislative Council ballot paper do not get such a big advantage when people are using iVote to cast their vote. I am not an information technology expert so I cannot add a lot more than what is in our submission. Unfortunately, The Greens expert, Mr Maltby, cannot be here today as he is out of Sydney. It is in our submission that the iVote software is not as secure as it could be.

I do not think there are flaws that caused major impacts in the last election but obviously the Electoral Commission needs to take on a preventative role and ensure that it is as secure as it possibly can be. The Greens also recommend that the iVote software be made open source software like in the Australian Capital Territory so it can be checked for potential flaws. Our recommendation 5 is the old chestnut about postal vote applications. We have advocated for many years that applications should be sent to the Electoral Commission and not back to candidates, officers or party officers. There are a number of risks associated with that and we think it would be much more efficient and desirable if the requirement were for voters to send their postal vote application direct to the commission or the local returning officer or representative of the commission.

Our party also believes that the pre-poll voting period is too long. It is very onerous on parties, as I am sure you are all aware of. It is also a big cost to the Electoral Commission and we believe voters have other avenues to cast their vote in that first week of pre-poll voting. We are suggesting that pre-poll voting commence eight days before the election on the Friday, and that would afford voters a fair opportunity. If they could not reach a pre-poll voting centre at that time there are other means by which they could cast their vote. The last point I want to make in my opening comments is about false statements in elections. Obviously we are all aware of the recent Federal election and debates about false statements. In essence, we do not want our elections to be won by whichever party tells the best and biggest lies. That is not what democracy is about, and we believe steps should be taken to curtail that sort of practice. Our party was a victim of misinformation in the Federal election—I will not go into details of that now and we are all probably aware of the vilification of the Labor candidate in East Hills in the 2015 election, which was a shocking example of a false statement influencing an election outcome.

The Greens would support an independent election tribunal that could impose penalties and make public statements of its adjudications on the truth of statements made by candidates or parties in an election. I realise that that is a big step and that it would be complex to work out, but we think we need to head down that path. I will not cover the donations and financial issues. They were dealt by the inquiry of the Joint Standing Committee on Electoral Matters [JSCEM] into political donations. Quite a few recommendations came from that. I do not need to touch on them. That concludes my opening remarks. Thank you.

The CHAIR: Thank you, Mr Ash. The Committee will proceed to questions.

The Hon. ROBERT BORSAK: Thanks, Mr Ash. How would you see the adjudication process working in a practical sense? How would a tribunal judge who is telling the truth and who is not? Are you talking about an Independent Commission Against Corruption [ICAC] style of arrangement?

Mr ASH: It would have to be a much quicker turnaround than that, I am afraid. There would be a complaint mechanism. There would have to be a panel of eminent people such as retired judges and respected former journalists, for example. I am not sure of the make-up. It is just a concept at this stage. They would need to be presented with the arguments and, within 24 hours, require the accused to present their case, particularly in the last week of an election. They would then adjudicate, respond and make a public statement. If the case were serious enough they might impose a fine.

The Hon. ROBERT BORSAK: In those circumstances what denotes truth?

Mr ASH: We would have to leave that to the tribunal. It might find that there are competing views, and that is fair enough. It is subjective, as it is in a court. We would have to place our trust in the tribunal and see how it worked. If it was not working we would have to look at other means.

The Hon. ROBERT BORSAK: So the concept of truth you are working from is subjective. It is not an objective measure.

Mr ASH: The panel would have to draw its conclusions from the facts presented to it, just as a judge or jury does.

The Hon. ROBERT BORSAK: A judge works according to the law. His judgement is usually tightly controlled by the statute and regulations. How do you see the process working in relation to that?

Mr ASH: It is true that there would need to be a range of penalties. The evidence presented is what determines the findings of the tribunal.

The Hon. ROBERT BORSAK: Who would determine that the evidence being presented is the truth?

Mr ASH: The tribunal.

The Hon. ROBERT BORSAK: So the evidence being presented is to be judged in an adversarial way. Is that what you are saying?

Mr ASH: It could be by written submissions, or there might be an agreement to have a short hearing. As I said, it is not fleshed out. We do not go into details, but we believe something has to be done. There is South Australian legislation on truth in advertising. I do not think the Electoral Commission likes it, but we are not proposing that the Electoral Commission be the adjudicator. We are suggesting that there could be a separate body.

The Hon. ROBERT BORSAK: Recommendation 9 of your submission says:

The NSWEC to conduct audits of disclosures and claims for election funding payment instead of private registered company auditors.

I do not think that is right. The NSW Electoral Commission conducts audits already, and registered auditors also undertake audits. There are two audits, not just one.

Mr ASH: I agree.

The Hon. ROBERT BORSAK: I think that point is not right.

Mr ASH: It is privately audited at the moment, then the NSW Electoral Commission has its go. That is our understanding. I thought I read in the JSCem report a recommendation essentially agreeing with our recommendation that the Electoral Commission conduct the audits rather than a private company.

The Hon. ROBERT BORSAK: I think that was in response to the suggestion that only auditors should do it, as opposed to the commission. The current arrangements remain that there is a corporations requirement for an audit and, when the returns go in, the Electoral Commission does an audit as well.

Mr ASH: That is true. That is our understanding.

The Hon. ROBERT BORSAK: I refer to your recommendation 10a. What is your thinking behind stopping for-profit corporations and other business entities from making donations to a candidate or party?

Mr ASH: We appreciate that there is a constitutional hurdle there. I acknowledge that it is an ambit claim because it is so difficult to change the Federal Constitution. We believe elections are for individuals and community groups. For-profit corporations are very focused on their own vested interests and profits. We appreciate that corporations have huge financial capacity compared to ordinary individuals and community groups. We think it is way out of balance. I remember when the mining tax was proposed at the Federal level. Suddenly companies chipped in and campaigned with \$22 million to bring about an outcome. We want to see that stopped or significantly curtailed.

The Hon. ROBERT BORSAK: How does that balance with what unions would throw into the pot?

Mr ASH: We think there should be caps, but not unreasonable caps. We have a high regard for unions, their role in the community and the work they have done for wages and conditions. They should be able to campaign, but not excessively. We think unlimited spending by third parties is wrong. There should be reasonable caps, with some sort of correlation to the level of spending that parties are permitted.

The Hon. ROBERT BORSAK: That ties into your next recommendation, 10b, where you talk about a 50 per cent cap. How did you decide on that figure?

Mr ASH: I agree that that is fairly arbitrary. Perhaps a 50 per cent cap could apply to the upper House cap, which is \$9.3 million. That could be reduced substantially. I appreciate that the \$100,000 cap for the lower House is not an enormous amount of money. Reducing that by 50 per cent would be a little strict. Overall, our contention is that the spending caps are way too high. They encourage parties to chase donations, some of which, as we all know from past inquiries by ICAC and so on, are not donations that help our democracy.

The Hon. ROBERT BORSAK: But your recommendation 14 argues against what you are saying. It talks about giving Legislative Assembly candidates an exemption from a cap on donations.

Mr ASH: No, that is from their party. There is a problem with parties putting their own funds into the campaign accounts of their candidates. I think we all acknowledge that parties need to be able to spend money to help their candidates. Often candidates are no richer than anybody else. There is a crazy provision in the Act which allows parties to do that. It is by actually spending the money and then invoicing their candidates, and the candidates never pay the bill. Our argument is: Why go through that crazy, convoluted process when you could simply allow parties to donate to their candidate's campaign? Section 84 (7) of the Election Funding, Expenditure and Disclosures Act acknowledges that parties have to get money to their candidates. We are saying: Let's do it directly; let's not have this convoluted method. The expenditure caps take care of how much a party would donate to its candidates, so it would not be limitless.

The Hon. ROBERT BORSAK: Your recommendation 11 talks about capping membership fees to a party to a maximum of \$250 per annum. Why is that figure better than \$300, \$500 or \$1,000?

Mr ASH: Perhaps it is not. We had to pick a figure and we thought \$250 was reasonable in terms of party administration for an individual member. I have not looked at the Act on this for a while, but I suspect the membership fee allowable is something like \$2,000 before it is treated as a donation—they are all donations, actually. We think \$2,000 is excessively high. We would be happy with a reasonable figure. It might be a bit more than \$250 but not a lot more. To that extent, it is an arbitrary figure but we would want a reasonably modest figure for a donation fee.

The Hon. ROBERT BORSAK: Why are you arguing for the money to be permitted into the campaign account?

Mr ASH: At the moment it is banned. Membership fees are a reasonably clean source of funding for parties. People pay generally small amounts and it is accumulated. It has more integrity than, let's say, a huge donation from a mining company, a tobacco company or other prohibited donors. We cannot really see a logical reason why a party should be banned from spending that sort of income on an election. At the moment it is applied for admin purposes for parties. We could not see any logic in that.

The Hon. ROBERT BORSAK: I take you back to your recommendation 4a. Do you not think that iVote on an open platform or open source operating system might be more easily hackable?

Mr ASH: That is possible. I am not an expert in this area so my comments should be taken with a grain of salt on this issue. The point we were making is that the public or parties cannot check whether there are flaws in the software. I believe the Australian Capital Territory [ACT] might already have open source software for its iVote. I am not absolutely certain of that. You may have a point, if it is publicly accessible, for those inclined that way, but if it has removed the flaws maybe that is not a problem. I am not the one to ask. I believe there are witnesses later on who have more expertise in this area than I do.

The Hon. ROBERT BORSAK: In relation to computerised voting, have you turned your mind to the ability of your party to scrutineer the voting—audit trails, for example, in the voting system?

Mr ASH: We have not really given the scrutineering a lot of thought; that is true.

The Hon. ROBERT BORSAK: I think that is enough for me.

The CHAIR: I have one question on a bit of a tangent. What is the view of The Greens on not being able to hand out on Election Day altogether, a bit like they do in the ACT where you have to be a kilometre away from the polling booth?

Mr ASH: We probably do not have an official position at this moment. The thoughts amongst members are that we used to support what you are suggesting—that there just be information in each booth for voters to see. We were concerned about the wastage of paper and so on. But we have come to appreciate that the true support for a party is gauged by how many people they can turn out on a polling booth. If they have genuine support within the community they can rally people to staff the booths in many electorates or completely in one electorate. It is quite a good gauge of community support. We are still having that debate and they are the two streams of thought. I suspect the latter stream is gaining more support within The Greens. Just having a nice name on a ballot paper but not having genuine community support or many members or supporters would give parties tremendous advantage if the other parties that could muster polling booth workers were prevented from doing that. Those are our thoughts on it at the moment.

The CHAIR: You have spoken about iVote but what about a system of full electronic voting on Election Day—would you support that?

Mr ASH: Not at this stage. It would need lots of trials on a small scale. Perhaps start with a council or a safe electorate in which people would have confidence as to what the result is going to be. I do not think you can do it in one fell swoop. It needs small-scale trials, certainty and full confidence in electronic voting. We are trialling it now within our own party.

The Hon. BEN FRANKLIN: Firstly, regarding your analysis of why the Legislative Assembly elections are undemocratic, I respectfully suggest to you that perhaps the assessment is superficial. The Nationals, for example, only contest 20 per cent of the seats. To say that because they only get 10 per cent of the vote across the State they should get a far smaller number of the seats is patently absurd.

Mr ASH: That is a reasonable argument, but it is in coalition with the Liberal Party. That is why it does not contest many seats in the city, and it could do if it chose to.

The Hon. BEN FRANKLIN: Indeed, but one of the fundamental premises of your suggestion is that the National party should have far fewer seats, under your assessment. I contend that because the National party only contests 20 per cent of seats and they get, therefore, approximately 50 per cent of the vote under our system, that means they are clearly the leader in regional New South Wales seats, therefore it is appropriate.

The CHAIR: Some regional New South Wales seats. I am the member for Wollondilly.

Ms MELINDA PAVEY: The majority of regional New South Wales seats.

The Hon. BEN FRANKLIN: We will move on to a more pressing issue. You would be aware that in 1999 there was significant change to the electoral system for the Legislative Council, which resulted in a smaller

ballot paper after the table cloth ballot paper debacle. Antony Green has suggested that now is the time, after four elections with the new system, to have another look at potentially reducing the number of candidates on the ballot paper by imposing some higher bars for them to jump in order to get on board. What is your view and what is the view of The Greens as to those suggestions?

Mr ASH: I think the ending of group voting tickets was a great step forward. The Greens had a hand in that. I do not think you can impose monetary bars. People have a right to run. The registration requirements for parties are reasonably onerous. You have to have 750 members. So other hurdles—

The Hon. BEN FRANKLIN: I think Mr Green is referring to the Independents, the ungrouped people and so on. He is not speaking about raising the nomination fee but about raising the number of people who would be required to nominate them.

Mr ASH: The ungrouped Independents—I do not pay a lot of attention to them, I must admit. I am not sure how many are required to nominate now. Is it 100?

The Hon. BEN FRANKLIN: It is 15.

Mr ASH: I think we would support more than that because it is not that hard. If you have got some genuine support you can get many more than 15 signatures to contest an election. While our party has not made a formal decision, I think we could agree to that. As for making it harder for groups, we would be cautious about that. I note that there seems to be significantly fewer parties contesting the State upper House elections and the New South Wales Senate. I think the registration provisions help that and the fact that group voting tickets were phased out some time ago. But the point you make on ungrouped candidates we would tend to agree with.

The Hon. PETER PRIMROSE: If I can go to your recommendation 3a, one thing that arose out of this Committee's deliberation many years ago was very simple. It was to allow people who were handing out for candidates at pre-poll to leave their material overnight at the site. That solved a lot of problems for people and was sensible. For as long as I have been involved in politics one issue has been where you are allowed to stand on Election Day. While the returning officer is seeking to set up the booths on the morning everyone is running around trying to ask, "Where are we allowed to stand?" That is why I am interested in your recommendation 3a in relation to allowing some discretion. It also occurred to me that for the returning officer to specify in detail whether you are allowed to stand at the gate of the school or you can stand outside the hall where they are conducting the ballot is always an issue but no-one knows until the day when the returning officer on the booth makes the call first thing of a morning. Can you give me your comments on that?

Mr ASH: Sure. I will address your last point first. I think at State elections it is actually the building. I think you can hand out in the school grounds. My understanding is it is different for Federal elections. It is six metres from the school gate.

Ms MELINDA PAVEY: Five metres from the entrance to a polling booth.

The CHAIR: It depends on who is there on the day.

The Hon. PETER PRIMROSE: It is confusing, is what I am saying.

Mr ASH: It is confusing. We prefer the State model in that area. If you have four or five gates to a school it is quite a task for any party to staff it, particularly because every party has areas where they are weak in the State. We prefer being able to hand out closer to the building, not necessarily at the school gate. Turning to the pre-poll centres, we would support the returning officer having some discretion. I think at a practical level some of them exercise that. They come and say, "Look, you're not allowed to stand within this line and hand out." That is fair enough. If you have only got one booth worker and they are coming from both sides, you can quickly run across there and get six metres away and hand out on that side and go backwards and forwards.

But pre-poll where you are there all day, often it is the same group of people handing out for a particular party on pre-poll. They are there for hours and if it is raining or whatever and there is some sort of shelter—I think the test should be that there is no impeding of voters. That is the key thing. If there was some sort of discretion with the returning officer to say, "Listen, you're coming too close, these are the lines", we would think that would be better rather than six metres, which might mean you are standing in the rain all day. You might be a few metres away, not impeding voters and not standing in the rain.

The Hon. COURTNEY HOUSSOS: Or the very hot sun as is often the case in March.

Mr ASH: That is right.

Mr MARK TAYLOR: I do not know whether we covered your recommendation about the eight days for pre-poll and your reasoning for wishing to shorten that.

Mr ASH: Can you tell me the recommendation number?

Mr ADAM CROUCH: It is recommendation six on page 6.

Mr ASH: I must say the Federal election one is excessively long at three weeks but we think two weeks is plenty too. I think from experience that first week is pretty quiet. There are not many voters coming through and they have alternative options. For people going away, if they are going away two weeks before the election they are quite likely to leave on the Friday, Saturday or Sunday and miss out on that opportunity for pre-poll voting locally. I would say with people going away that is when most of them do go away. I know things are changing, but that still holds to a large degree.

If it opened on the Friday eight days before polling day it would still enable those voters who are going away for that week prior to polling day to cast a pre-poll. The vast majority of pre-poll voters cast their vote in that final week. The Electoral Commission has to rent premises and pay staff, which would be reduced for the Electoral Commission if it was a shorter time. We think voters have alternative options in those four days we are talking about not having as pre-poll. They could do a postal vote or an iVote if they are going to be away. It is onerous on the parties as well. That is our rationale.

Mr MARK TAYLOR: In summary, you would agree there has been an increase in pre-poll voting but despite that you think they should shorten the time?

Mr ASH: I do.

Mr ADAM CROUCH: You talked about reducing it to eight days. Had you taken into account the distance in some regional areas? Those people also do not have the same sort of internet coverage as those of us in the metropolitan area. They travel very large distances to get to a polling booth. Did you take that into account when you considered reducing it to eight days?

Mr ASH: I think that is a reasonable point. It is possible it could inconvenience some voters. I acknowledge that. But eight days is quite a long time to get to a booth. At the Federal level they have extended it to three weeks. In New South Wales we do not have any problem with it being two weeks. We lose that first week compared with the Federal level and there are not too many complaints about that. I think we could shorten it more and I think eight days is a reasonable amount of time for people to get to a pre-poll booth if they need to and they cannot avail themselves of other methods.

Mr ADAM CROUCH: On Election Day itself the Liberal Party has made the suggestion that the commission's process for recruiting temporary staff should be examined, particularly with regards to the adequacy of checks on partisan commitments that might compromise an individual's duties. What is your opinion on that proposal?

Mr ASH: I think it has got merit. You do not want party operatives, for example, or dedicated party members being in charge of ballot papers. That is the point you are getting at, I take it. We would want to see the exact provisions, of course. They should not be too stringent. But we think that elections should be fair and seen to be fair and sooner or later there will be someone who is highly active in a party who turns out to have been working for an electoral commission on Election Day and it raises questions of propriety. We would certainly consider anything that was put forward.

Mr ADAM CROUCH: To go further on that, we would say the same consideration would have to be given to people who are members of unions working on Election Day at a polling booth.

Mr ASH: I think that might be going a bit too far for The Greens. That would rule out an awful lot of Australians. We would have trouble supporting that. Obviously our party has made no decision, I am speaking as an individual there, but what about members of business councils and corporate executives? Where do you draw the line? I think that might be a bit too far for us.

The Hon. ROBERT BORSAK: Mr Ash, getting back to your recommendation 1 in which you say the Hare-Clark proportional representation system should be introduced into New South Wales, what are the benefits of that system over what we currently have? Why is it more democratic?

Mr ASH: We have a good proportional representation system in the upper House and the outcome reflects more accurately what the voters intended in terms of who got elected with their percentage of vote and their percentage of seats. But we do not think that should be confined just to the upper House. We are talking about the house of government here, and that should be fair as well. I think it is reasonable that proportional representation be adopted for the house of government. Why should parties be excluded just because their voter support is not concentrated in a particular electorate? Smaller parties, if there are so many seats—93 seats—and they can muster an appropriate level of vote, they should be rewarded with the corresponding percentage of

seats. The New Zealand system is good like that; it allows for a local electorate but then it evens it out with party tickets so that the level of vote received by a party is reflected in the number of seats with which it is rewarded. Was there more to that question that I did not answer? I lost track.

The Hon. ROBERT BORSAK: No, you are going through the process. I was asking you to tell me why it is more democratic using a Hare-Clark approach as opposed to what is happening in New South Wales at the moment.

Mr ASH: I think it is fairer simply because it reflects the will of voters more accurately. It is as simple as that.

The Hon. Dr PETER PHELPS: You realise, of course, that it is the house of government and if there were to be a system of proportional representation in the lower House it would almost certainly involve having to make a larger number of compromises so that the numbers could be obtained to have government. You would have the situation inevitably of larger and larger coalitions. Given that one of the major parties, the Labor Party, and your own party, The Greens, does not allow conscience votes except on a very, very limited range of social issues, and in your case, The Greens, not at all, then could you have a system whereby the will of the individual members of Parliament, who might be in difference to the established party hierarchy, could say whether they wanted to be part of the Government pursuing a particular course of action or not?

Mr ASH: I acknowledge that it would take a very popular major party at a particular time to form a majority government in its own right. I think the outcomes of many European elections bear that out. There would be coalition or alliance governments much more often under proportional representation in New South Wales or Australia. The Greens NSW make no secret of the fact that we do not have conscience votes for our MPs in State Parliament. We do not hide that, and when voters vote for candidates we are very happy for them to be aware of that fact and that the MPs will be abiding by the grassroots, democratic decisions of the party and its members rather than doing their own thing and going against democratically made party decisions.

The Hon. Dr PETER PHELPS: You say "democratic", but the only democracy you actually speak about is a ruthless tyranny of 50 percent plus one; 49 per cent are immediately made voiceless and excluded from public discussion and consideration. Even the Labor Party, God love them, allows some of their left-wing upper House members to speak against bills even if they are voting for them.

The CHAIR: Dr Phelps, it is good to see that you have arrived on the Committee.

The Hon. Dr PETER PHELPS: I am wondering how you can possibly claim something is democratic when, by a quirk of fate, someone misses their bus or their solar-powered bicycle gets a flat tyre and so they miss the votes on the floor of The Greens party meeting and it ends up 51:49 instead of 49:51.

Mr ASH: Our decision-making processes are a little bit different to that. We make decisions by consensus, or by a 75 percent majority if it goes to a vote. If we make a decision on a matter, it does enjoy a very substantial support within the party.

The Hon. COURTNEY HOUSSOS: Some of the other parties have suggested that there needs to be a longer period between the ballot draw and pre-poll opening. Do you or The Greens have a view on that?

Mr ASH: We do; it is short. I cannot remember the exact number of days—

The Hon. COURTNEY HOUSSOS: Usually only three or four.

Mr ASH: —three or four or something. It is a short turnaround in terms of preparing 93 different how to vote cards and getting them printed. We generally have to rely on photocopying for the first few days of pre-poll because it is too much strain on our party to get all the how to votes laid out and printed in a three- or four-day span. We have always had problems with how short the State nomination period is. It is a very short window, so perhaps nominations could open earlier, have a slightly longer period than now and close earlier to allow parties to lay out their how to votes and get them printed. In the mad rush it is almost inevitable that there are mistakes; there will be two number 5s or whatever on a bunch of how to vote cards. That mad rush is not desirable in the elections. We would support moves to lengthen the period you are talking about.

The CHAIR: As there are no further questions, I thank Mr Ash for appearing before the Committee today. The Committee may have some supplementary questions to ask you, the responses to which would be required within two weeks of when they are sent to you. Would you be happy to answer those in writing?

Mr ASH: Alright. Thank you.

(The witness withdrew)

ANTONY GREEN, Private citizen, affirmed and examined

The CHAIR: Thank you for appearing before the Committee today. Are there any procedural matters or any information that has been sent to you that you would like to ask questions about?

Mr GREEN: No, I am quite comfortable with the process.

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

Mr GREEN: I am appearing in a private capacity. I work for the ABC; I wish to make it clear that the views I am making are my own from experience in electoral matters, not views of the ABC who have only limited interest in electoral matters.

The Hon. Dr PETER PHELPS: Is that a request for more funding?

Mr GREEN: Issues of electoral law may be more precise.

The CHAIR: Would you like to make an opening statement before we proceed to questions?

Mr GREEN: I will make a couple of opening statements. My submission mainly concerned the Legislative Council and issues to do with the ballot paper. I remind members of the Committee what the last election ballot paper looked like. We had the famous tablecloth in New South Wales in 1999. I tend to refer to the ballot paper that has been produced by the electoral changes since as being more like a mutant Lotto form. I think it has become too large again and I have raised a number of matters in my submission in terms of deposit fees and to do with the number of candidates who appeared on that ballot paper. I think the number I had was that nearly a quarter of the candidates and a third of the ballot paper were taken by 112 candidates who got 0.5 per cent of the vote between them. I think that we might need to look at the deposit and nomination process. There are candidates appearing on this ballot paper; there were six parties with a box above the line who had no party name and there were three groups that did not even have a box above the line. We were fortunate that the ones with boxes above the line appeared at the right-hand side of the ballot paper, and so they therefore were not confusing.

We were fortunate that the ones with the boxes above the line appeared at the right-hand side of the ballot paper, so they were therefore not confusing. However, I point out that the missing boxes was one of the causes of the initial problem with iVote, where there were some boxes missing. That was a problem of communication between at the Australian Electoral Commission [AEC]. I understand one said to the other, "There are columns without boxes", and another said, "Yes", because there were, but not understanding that they had missed two others in the initial draft of the iVote ballot paper. So the fact that there are columns on the ballot paper without boxes, which virtually guarantees that none of those groups can get elected. If there is no box above the line, they cannot get elected. I do not see why we should allow them to be there without enough candidates to have a box. There is an ungrouped column they can appear in. However, at the moment if half a dozen people nominate two candidates, the ballot paper would be six columns wider. That creates more confusion, a larger ballot paper, and all those ballot papers have to be processed.

My suggestion is to increase the number of nominators. I have provided some examples compared to other States. The idea would be to raise the nominators per candidate to 50. That would be unique. It means that for a column like this they would need 750, which is the same requirement on political parties for registration. It would not give them a name above the line, but it would require them to do more work to get on the ballot paper. At the moment, they are required to 225 signatures and a \$5,000 deposit. That would hopefully avoid the increasing size of the ballot paper. There is a problem that the ballot paper simply cannot get any bigger.

I also made a point about the iVote system. It was depositing its first view on the first four columns on the ballot paper. The Australian Capital Territory has randomised the appearance. You do not change the physical columns, but when you iVote it opens up on a particular point on the ballot paper. That point would be randomised. Sometimes it would be at the first column and sometimes it would be the last column or one in between. There was evidence—I do not have it with me, but I can provide it to the Committee; it is also on my blog—that the first couple of columns received more votes than otherwise from people who did not realise that they could move backwards and forwards on the ballot paper. That should be dealt with.

When I appeared before the Committee at the last hearing, I understand that one of its recommendations was at my suggestion that the writs be issued on the same day as the Parliament is dissolved. Currently, the Parliament is dissolved on a fixed date, but the writ is not issued on that date; it is issued up to three days after the dissolution. If the date of the issuing of the writs were on the same day as the dissolution, we would have an extra three days in the campaign. At the moment, before the election the AEC cannot advertise

the date for the close of enrolments or nominations because that is determined by the writ. We know when the Parliament is dissolved, but we do not know when the writ will be issued. If we changed the Parliamentary Electorates and Election Act so that the writ is issued on the day that the Parliament is dissolved, we will have an extra three days of campaigning and everyone will know all the key dates. The problem raised by the previous witness would be resolved because we would know the dates. Unfortunately, there would be only three extra days. When the fixed-term was established it was a very short time. But that is one way to get some extra days.

I spoke about how-to-vote cards at a number of committee hearings. They are now registered, but they are not available; no-one can look at them once they are registered. Victoria and Queensland register how-to-vote material and that material is made available on their websites. Anyone who wants to see it, can do so. In attempt to make this material more publicly available, the previous Government allowed people to access how-to-vote cards in an electoral office on the day of the election if they were on the roll in that electorate. That is of no use if you are in Deniliquin and would have to go to Broken Hill to look at it. If material were made more publicly available, parties can self-regulate outside polling places because they know what how-to-vote material has been registered. If a card that is not registered is being distributed, everyone knows. Currently, the law is specific about what you can look at as a registered how-to-vote card. I do not know how it works at polling places, but obviously some people are allowed to look at the material there. However, that is not what the law says. I think that restriction should be lifted and the registered material should be put on the website as it done with things like the child declaration statements and various other pieces of material for the election. They are my initial comments. I am happy to take any questions.

I would encourage the introduction of electronic pre-poll voting to encourage developments towards that. I think the commission is well progress towards that. It was prevented from doing it at the last election because it could not get legislation changes through. That would ease the congestion at places like Sydney Town Hall and would be a significant savings in terms of paperwork. If it were rolled out initially in a limited number of pre-poll voting centres, that would be a move towards implementing electronic voting. I would encourage more electronic voting and attendance voting of that type than I would make iVote more available. I am in favour of attendance voting rather than a massive expansion of iVote.

The CHAIR: Would you support going to an electronic voting model over a few elections to complete electronic voting?

Mr GREEN: We cannot introduce electronic voting at once. It would be enormously expensive; you need a lot of equipment. You could do it more cheaply by having each school set up with some sort of wireless system and people could come with their laptops and vote. Of course, that presents security issues. In terms of polling places, there is the endless problem of getting access. It is hard enough getting access beforehand to set up the polling petitions and so on. You have to get access beforehand to set up a computer network and that is by far the biggest problem. You introduce electronic voting for a purpose. It has been introduced in countries like Brazil, India and the Philippines to deal with corruption. Elections are run by local government officials and local warlords are able to stuff the ballot boxes and threaten voters without the central Government being able to do anything about it. Electronic voting solved that problem.

The United States conducts multiple elections on the same day, which makes it very difficult to count votes by hand. They have one ballot paper for multiple elections. It went down the path of mechanical and more recently electronic voting to deal with the difficulty of counting. If we are going to introduce electronic voting in Australia, it has to be for a reason. Sydney Town Hall would be the classic example. They count for 93 districts there and must account for ballot papers for 93 districts. Electronic voting would represent a significant saving in paperwork, counting and reporting. If it is done in pre-poll voting centres, it is done for two weeks. That would amortise the cost over a longer period. As well as capturing pre-poll votes within districts you can capture pre-poll votes for other districts. Again, you capture more votes, which you then do not have to process as declaration votes.

Some of the criticism of the AEC in terms of how it handles declaration votes does not apply in New South Wales. In New South Wales every polling place has the roll on a laptop and they are able to ensure that they are not giving provisional or absent votes to people who are not on the roll. The Commonwealth is still giving people declaration votes and absent votes when they are not on the roll and they are sent to the returning officer and cannot be processed. Paperwork is created that could be avoided if they did what New South Wales and Victoria have done, which is to check absent voters on the roll. I think we should move in that direction, but it must be a staged implementation. That also allows you to work out the bugs and problems that will inevitably occur. Of course, there can also be problems with paper ballots; you can lose ballot papers, polling place can burn down—

The CHAIR: We have seen that before today.

Mr GREEN: It must be checked properly and you need to engage in some sort of post election audit. For example, an auditor could take a random sample of polling places and check them off against what was electronically entered. That is something that I hope the Commonwealth does with its new scanning technology. The one thing we should avoid is technological determinism. Why are we using an old technology when a new technology is available? The old technology has checks and balances in terms of the audit trail. That is a huge advantage. People also say that if we can bank online, why can we not vote on line. The simple answer is that, like shops, banks accept a level of fraud. To drive fraud down to zero is a diminishing rate of return; it costs you more and more to knock out fewer and fewer incidences of fraud. In voting we want to drive the fraud to zero, so it will inevitably be expensive. The comparison with online banking and online transactions is invalid. One of the things we must do with voting is to drive fraud to zero, whereas a bank is interested in ensuring its services are as available as possible. It accepts a degree of fraud along the way as a costs-benefit analysis. What that would stop potentially is some of that innocent sort of voter fraud where someone's daughter is overseas and someone turns up to vote on their behalf so they do not get fined. We have no measure of the incidence of that. It would not stop you voting at another polling place because unless you wire up the polls, if you go from one polling place to another voter ID would not stop that person voting again. So I think you are putting something in place which is an unmeasurable problem, and with compulsory voting most people vote anyway.

You do hear apocryphal stories of people going around finding somebody is not voting and then turning up and voting on their behalf. You might stop that but, again, we have no evidence. So I am not convinced that Australian elections are being rigged by that sort of fraud. I think the possibilities for fraud in postal votes, for instance, are much greater than on-the-day attendance voting. Attendance voting, you are actually there. Someone can apply for postal votes, fill them in and send them back and you have no real evidence of what is happening. Postal voting is the least secure form of voting, and in Britain when they tried to loosen up the rules on voting to increase turn-up rate most of the fraud was occurring at postal votes; it was not attendance ballots that were a problem.

So I am not convinced it is a major problem. We saw it in Queensland. You have to water down the rules so much that in the end all you have got is a very soft-touch approach: you turn up to vote, you say your name, the clerk says, "Can you show me ID"—and the forms of ID in Queensland were quite low level—did you have a bank account, did you have a drivers licence? It was not photo ID; it was anything that proved that you lived at the address that was on the roll. So you could have bank statements, land tax statements, rates notices. That is what they did in Queensland.

The biggest problem they had was with remote Indigenous voting where the people were not likely to have drivers' licences or bank statements or land rates notices, and the Queensland Act when they did this had no provision for some other form of vouching. In Canada, if someone does not have ID someone who is with the person is able to vouch for them, for instance. That is used a lot in remote indigenous communities in Canada. I think it is a problem which I am not convinced is major enough to start imposing ID checks in that way.

The Hon. ROBERT BORSAK: Just reading your recommendation 2, and I am looking at the table on page one of your submission, I note that columns on the ballot papers based on the changes after 1999 collapsed and then seem to be sort of hovering around and in the most recent election jumped back up to 25. There has been an inexorable increase, almost linear, up until 2015 in the number of candidates on the paper. I have read your arguments but why per se is it better to effectively treat ungrouped and/or non-party independents as parties by imposing a nomination requirement of 50 signatures and the commensurate money for that? Is it fundamentally more democratic to keep people off the ballot paper? Because it is very difficult to see how an independent could get another 14 people to join with them on the ballot paper as a group. I think that is what you are getting to.

Mr GREEN: I would accept that except I think this form of voting is more a problem in local government and I think there is a serious problem that this method of voting was transferred to local government where you do have independents running for council and they get stuck. Say in Campbelltown council, if you want to run as an independent you have to have seven other people on your ticket. I think as it applies to local government that is ridiculous because independents are local.

In the State of New South Wales we are talking about five million voters. Pauline Hanson was very well-known, John Hatton was very well-known and both of them could not get elected. Columns have been used on Australian ballot papers since 1922 in the Senate. When they went to preferential voting they decided to start grouping candidates together. The structure has always been that you nominate as an independent and then you request to be grouped. At the moment, because of the constitution we cannot have this ticket voting system with fewer than 15 candidates. That is why the candidates when there were fewer than 15 candidates were denied a

vote. The way the constitution is written, if you gave groups U and W at the last election a box, every box above the line would have been an informal tick because there were fewer than 15 candidates.

If they want to have a box above the line they have to have 15 candidates. If they want to run and they do not have a box above the line I would say why are they on the ballot paper? They have not a hope of getting elected; they take up space across the ballot paper, they have no hope of getting elected. I think while there should be rights for people to nominate, I also think it is very important that people be given a ballot paper they can read. I happen to think that is a very fundamental, important principle. If we have a bigger ballot paper next time, the only responses are to go to double rows, as occurred in 1999, or to make the font size smaller and issue magnifying sheets, which has been the solution in the Australian Electoral Commission. In the end it is a fine balance between the right to nominate and the right for voters to be given—

The Hon. ROBERT BORSAK: I agree with that. I just think, given the communication-age we live in and given the excellent work that you do, for example, a lot more people are interested in the politics of elections and getting involved in the electoral process and I think a lot of them do not like the idea, in my view, of being part of a party, and putting structures that you are recommending like that in place effectively says you are to be treated as a party if you want to get a group a column.

Mr GREEN: Under the current system, if someone wants to send 15 independents they are given a substantially easier task for getting on the ballot paper than to register a political party. If you want to register a political party you have got to get 750 members, you have got to pay \$2,000, you have got to do your annual reports and you have got to be registered 12 months before the election. If a couple of people want to get together and set up a political party at a club one night they just need 225 people and they get a column on the ballot paper. So what I am saying is that I think, as they do in Tasmania, if they want to stand as independents—as an example, Andrew Wilkie contested the 2010 Tasmanian election as an independent with his own column on the ballot paper and he met the higher requirements out of 100 nominations instead of 10 to get on the ballot paper. That exists in Tasmania.

I think the difference here in New South Wales is for an upper House we have those constitutional restrictions on the number of candidates that must run if you want to have a group voting square. The recommendations I have made I think are reasonable in terms of trying to balance between the right to nominate and the right to have a sensible ballot paper.

The Hon. ROBERT BORSAK: Listening to what you are saying and reading in your submissions what you say about iVote and talking about iVote in the pre-poll, I did not quite get whether you are for the long-term implementation of an iVote arrangement right across the board as a substitution for what I would call a full audit trail hard-copy voting.

Mr GREEN: iVote has a role—it was essentially designed as a replacement for postal voting. Postal voting is going to disappear. The postal service is becoming less and less reliable and that is why iVote was there. iVote is a beautiful solution for overseas voting. I was talking to the Australian consulate staff in New Zealand last week who were talking about the difficulties they had. Before the Federal election they did not have access to the roll—there was a whole series of things. iVoting can be a replacement for a lot of overseas voting, I think, which should be encouraged. There are certain types of votes where it is useful. I would not roll it out as a mass voting system. I think we should have attendance ballots. I do not agree with iVoting. I think part of the purpose of elections is a day—or with electronic voting it may become a period—when you turn up as a person and vote at a centre, and I would prefer that people still attend somewhere to vote than just vote from home if, for no other reason, the same problem as with postal voting. If a family applies for postal votes, who knows whether they are each filling in those postal votes or their iVotes or whether one person is filling them all in for everybody.

The Hon. ROBERT BORSAK: So the old-fashioned technology is still the best technology for the majority of voting and the iVote is good for augmenting around the edges I suppose.

Mr GREEN: Yes, and I think overseas voting is a good example. People who want to vote, sometimes it is difficult for those overseas postal votes, especially in New South Wales, where you have only got a short campaign—Federally they have got a couple of extra weeks—but you have got to get the ballot paper to somebody overseas, they have got to fill it in and they have got to get it back. In New South Wales I think it is four days after the election when postal votes shut off and it is only about two weeks for voting before the election, so you have only got 2½ weeks, where for a Federal election campaign you are talking about six weeks. So I think iVote is a reasonable solution for overseas voting.

The Hon. BEN FRANKLIN: Mr Green, there was a lot of confusion about pre-poll votes and whether they were going to be counted on the night. The Electoral Commissioner put out bulletin No. 9 that

suggested that they were not going to be counted, or published at least, on the night and then district returning officers started suggesting that they would be counting them but not publishing them and so forth. Obviously finally the results did go up on the night. From your perspective, would it be ideal for pre-poll votes definitely to be counted on election night and for those results to be published?

Mr GREEN: Are you talking about New South Wales?

The Hon. BEN FRANKLIN: Yes.

Mr GREEN: I had the same confusion; I was getting different answers at different times. I accepted it to some extent because the NSW Electoral Commission was introducing quite massively changed procedures with scanning processes. They were trying to centralise the counting of postal votes and a number of those things in a way which standardised the procedures. A number of other States have gone down the path of centralising the counting of postals and the like. I think a bit more clarity would have been helpful. The thing I would say, of course, if you move down the path of electronic voting for pre-polls then that solves some of the problems. It becomes quite easy to count. But a bit of clarity on that would have been helpful at the last State election but I am aware they were trying to introduce some quite massive changes to the system. I think different parts of the organisation were of one view and others were of the view that it was too difficult to do.

The Hon. BEN FRANKLIN: Do you agree that with the increasing number of pre-poll votes, combined with the public's desire to have certainty on election night as much as possible about who has actually won, that it is deal for those votes to be counted on the night?

Mr GREEN: I will make a direct comparison. Victoria did not count pre-polls because of the way they collect pre-polls. They could not count them on the night. The count of votes on election night reached about 60 per cent. There was a by-election in South Australia last year, the Fisher by-election. It only reached 50 per cent on the night. It is a very low vote and got a huge amount of votes to come. So those pre-polls should be counted but it is difficult if the Electoral Commission is conducting polling places on the day and those polling places require staff and they also need other staff after 6 o'clock to count these very large bundles of pre-poll votes. Certainly in the Federal election some of those pre-poll voting centres took 8,000 to 10,000 votes. It is a significant effort to count those and you have to have staff set aside to do it. I can well understand some of the difficulties that occur in this area.

This is where you do get the advantage from electronic voting, if you can concentrate on the areas where there are large pre-poll voting centres, say, if a pre-poll voting centre, for example Parramatta—and I am not quite sure of the details—would have had a big pre-poll voting centre which would take huge votes for Parramatta and significant numbers from surrounding electorates as well. If that was all done electronically you would have a huge number of votes from Parramatta very quickly, and a large number from the surrounding electorates. So there is a real cost advantage in terms of conducting the centre and also getting the votes on the night so the votes should be counted.

You could move down the path of New Zealand. New Zealand starts to count its special votes on the afternoon of the day. Their aim is that when their voting stops at 7 o'clock, within an hour after that they report all of the equivalents of our pre-poll votes. In fact, they changed their Act to actually start counting earlier in the day to deal with their vast increase in pre-poll voting. The difference is in New Zealand there is no campaigning on Election Day. So the parties have scrutineers available who can go along and observe the process. The problem with counting pre-poll votes before 6 o'clock—and the Electoral Commission could do it—is whether the parties have people available to scrutineer the process because you are campaigning on the day as well.

One of the cheapest and easiest solutions to getting pre-poll votes counted is to count them earlier in the day with relevant issues of secrecy involved. The issue is whether candidates and parties have staff available to scrutineer that process. Of course, you could trust the Electoral Commission to get it right without scrutineers, but that is up to you.

The Hon. BEN FRANKLIN: More broadly regarding the Electoral Commission, do you have any concerns regarding, particularly obviously at the last election, either its counting procedures or the information available on its website? Do you have any concerns or issues you want to raise with this Committee?

Mr GREEN: I have a slight advantage because I get the data which produces its website that we get access to. Off the top of my head, there were some inconsistencies to do with the way preferences were counted. For instance, Ballina and Lismore were counted initially as throws between The Nationals and the Australian Labor Party and then it was clear The Greens were coming second in both seats. The commission chose not to recount all the paper ballots to get a new preference count. Given they were about to scan all the ballots, I thought it was a reasonable thing to do. If you waited one week you would get all the counts you wanted. This is a real challenge for them. If had been watching the Electoral Commission's count of the Federal election,

Maranoa turned out to be a contest between The Nationals, the LNP and One Nation. So they had been counting between the LNP and Labor for two weeks and then decided to recount all the votes and start the count again. In that case it was completely relevant because the LNP was going to win. They had done the same process in Port Adelaide. They stopped the count in Melbourne Ports to try to figure out who was going to finish second.

Sometimes you would be moving these ballot papers backwards and forwards and in a really close contest, in counting and recounting votes to keep everybody completely up to date, you end up taking ballots out of their original bundles and put at risk the process being challenged in the court if it is a really close contest. The commission has two key legislative tasks: one is to ensure the first preferences are counted thoroughly and correctly in a process that can be audited by a court if required and then after that to do a distribution of preferences. They are the two requirements. The indicative preference count is entirely for information purposes only; it is not part of the decision-making process.

You might remember in Balmain in 2011 the commission tried to do what it called a "three-party count" throwing between Labor, Liberal and The Greens to try to determine who would finish first and second. Even when they did that they still could not work out who was going to finish first and second. So sometimes that information is not available. It would have been nice if in Lismore they had recounted all those votes and everybody had known the precise result three or four days earlier as a result. In the end the commission chose a different task. We got the information a few days later than otherwise but the process was thorough, I understand, and there is a vast amount of information that has been made available because of the processes they adopted. I presume that is one of the thing to which you are referring or are there other matters?

The Hon. BEN FRANKLIN: It was actually an open-ended, genuine question. I was not looking for a specific answer.

Mr GREEN: I think one of the problems—and I am seeing it a lot by watching blogs after the Federal election—is that there are computer nerds who sit at home who think they can scrutineer the process by what is available on a website. If you had been following the count in places like Herbert and the like, the commission does its best to put all the information available on the website, but in the end someone who is scrutineering at the counting centre will have more information and will have a better idea of what is to come. The commission can put as much information as they can up on the website—and the Australian Electoral Commission puts up a lot more information than the States do—but in the end being on the ground as a scrutineer can assist.

One thing that might be useful—I think it is useful and AEC does it and none of the States do—is put information on how many postal votes have been returned: how many have been issued, how many have been returned and how many absent votes. There is information like that that helps people try to understand what is to come. The commission was considering that and ran out of time to do it. That would be one suggestion. It is just to make more information available on the declaration votes that are to come and then people have more confidence. It is not that suddenly 100 votes are appearing from nowhere which you are not expecting. If there can be more information on the declaration votes and transfers that are about to happen it would be better.

Ms ANNA WATSON: In relation to the pre-poll timetable, in your view should it be lengthened, shortened or remain the same?

Mr GREEN: One of the difficulties in New South Wales is simply that the campaign period is so short. New South Wales has the shortest campaign in the country as a consequence of the fixed term legislation. New South Wales campaigns are one week shorter than all the other States. Then you have the issue with a writ as opposed to dissolution. If the writ were taken back three days you could get a couple of extra days, as I said the specific dates of close of rolls and close of nominations could be made clearer. Commonwealth elections are normally about three weeks for voting, most of the States generally allow two weeks. I think two weeks seem to be the norm and it seems to work so I am perfectly comfortable with that given the other constitutional restrictions.

The Hon. Dr PETER PHELPS: Is it time to remove the constitutionally entrenched provisions in relation to the non-full counting of Legislative Council papers—in other words, to remove the sampling?

Mr GREEN: Certainly, yes. Of course that requires a constitutional amendment. I think there is a fixed local government law. Random sampling means that essentially if you do the count again with the same votes potentially you will get slightly different results. I just think the whole process of random sampling is designed to do the count once, and declare it.

The Hon. Dr PETER PHELPS: Essentially, it is an archaic provision due to the limitations of the technology at the time which has been superseded by technological advances in the intervening period of time.

Mr GREEN: Yes. We could use computers to do the count accurately. What we do is use computers to get the random sample accurate, or random. I think that should be fixed. It is a particular problem for local government. The random sampling, particularly with ticket voting in local government, requires the whole process to be more precise and accurate. Nobody in this country in this day and age should be using random sampling as part of the count. There are other ways of doing it that are perfectly good. Random sampling is a hangover from the days when votes were counted by hand.

The Hon. Dr PETER PHELPS: My second question is a bit of a left-field question. The electorate of Barwon is now more than 350,000 square kilometres. In all likelihood in a subsequent redistribution it will grow in size again and again until it becomes very large. Arguably, it is already unmanageable for the local member in that electorate. From your point of view, is there any merit in moving to a Western Australian style of model of deliberate malapportionment to take account of super-sized electorates?

Mr GREEN: Both Queensland and Western Australia have that provision. They have phantom voters, based on the size of the electorate. It applies to five electorates in Queensland and six in Western Australia. It is a reasonable approach. It requires a referendum to alter the distribution. New South Wales has the entrenched one vote, one value provision. The United Kingdom makes special provisions for the Isle of Wight, the Orkneys, the Shetlands and the Outer Hebrides.

The Hon. Dr PETER PHELPS: And for Scotland as an entity. The electorates in Scotland are substantially smaller.

Mr GREEN: I should have said the United Kingdom Parliament rather than the English Parliament.

The Hon. Dr PETER PHELPS: You never know; you might be prophetic.

Mr GREEN: A provision like that requires a referendum. If it were implemented it would affect only one or two electorates. As long as it was done with a mathematical method it would be reasonable. As I said, it requires a referendum.

The Hon. COURTNEY HOUSSOS: I want to pick up on the conversation about voter identification [ID] that the Chair initiated earlier. One point that you did not make that has been made in other jurisdictions that have introduced voter ID legislation is that it is disenfranchising generally, not just for remote Aboriginal communities but also for ethnic communities. Given Australia's multicultural background, that is a fair point to make.

Mr GREEN: Yes. It is clear that the roll has rarely been political in Australia in the way it is in United States. Laws are deliberately designed there to try to advantage parties one way or the other. Their procedure, where elected officials are actually party officials, and the way they run elections is so different from the way they are run in this country. Any electoral commissioner will tell you that they are always trying to make the roll as accurate as possible, because the more accurate the roll the better the election they can conduct. In addition, there are so many other people trying to use the roll for other purposes that if there are errors in the electoral roll they flow through and cause other problems.

The only experience we have with photo ID laws in modern times in Australia is in Queensland, at the last election, and those laws have now been repealed. That was a very soft touch approach. Many people viewed it as the thin end of the wedge approach—that, by having introduced it with a very soft touch, by regulation they could later toughen up the requirements. There was no requirement that there be photo ID, but that could have been changed by future regulation. I think some people would be very concerned that these matters, once introduced, can be altered by regulation. While Australian political parties are generally not manipulating the roll for political advantage, I am sure that they are tempted to and that they do it a little at the edge. We have seen the endless debate in the Commonwealth Parliament about when to close the electoral roll. There is clearly a partisan review on that. I worry about voter ID laws, partly because I think that it is a solution looking for a problem.

The Hon. COURTNEY HOUSSOS: We are investigating a range of different aspects of iVote. I note that you have published an article about the different instructions for iVote and the different results. Would you briefly outline that for the Committee?

Mr GREEN: I was trying to find my statistics on that. I will provide them to the Committee at a later stage. I have been taking the data from the scanned ballot papers, which are produced as a publication for the Parliament. One of the standout statistics was that people who filled in their lower House ballot paper using iVote gave more preferences. I think about 25 per cent more voters filled in preferences on iVote than on the day. It was simply because if you used iVote it gave you some general instructions, you went to the ballot paper and filled in a box and it asked if you wanted to add another preference. People then proceeded to do so. It is

instructive to look at the experience that we have just had with the Federal Senate. When the instructions said to vote from one to six, people filled in one to six. It appeared that 95 per cent of voters in the Federal election followed the instructions on the ballot paper. The instructions on the ballot paper seem to be influential. Perhaps we should look at the instructions on the paper ballot paper. If you want more people to give preferences maybe we should change the wording subtly to encourage preferences. Certainly the way that iVote operated seemed to encourage more people to give preferences. That is again one of the lessons you learn when you use a different technology. If you change the wording of something then you find a slightly different result is produced.

The Hon. Dr PETER PHELPS: My question relates to The Greens' proposal to have some sort of independent body to assess the truth or otherwise of claims made during the campaign. Do you think it would be useful to create such a body?

Mr GREEN: It is difficult. If a party wins office and says, "We promised to run a balanced budget," then in government they encounter a financial crisis and cannot run a balanced budget, did they lie during the election campaign? South Australia has some laws in this area. Every so often the electoral commissioner forces a party to issue a correction. It is always over something very specific.

The CHAIR: Like the potential privatisation of Medicare, for example.

That is a very large example. That comes down to the question: Was the proposal to outsource part of the payment system a proposal to privatise Medicare? A truth commission on that subject would find it very difficult to ascertain whether something was a lie, a fudging or misrepresentation. It depends on how you define it. Sometimes the framing of the question is a political issue, rather than the answer you get.

The Hon. PETER PRIMROSE: As in a referendum.

Mr GREEN: Yes.

Mr ADAM CROUCH: Mr Green, thank you so much for your evidence this morning. My question goes to iVote. You said earlier that iVote showed a greater proportion of preferences being placed. We discussed the ability for paper ballots to be misread or misinterpreted. What do you think about having some sort of augmented version of iVote to use at the polling booth on the day? A voter would walk in and vote on screen. The system could then print out the ballot and the person would place of ballot in the box. How many times have we seen votes that are difficult to read? We still fill out the ballot paper with a pencil, for goodness sake. What is your view on an augmented version where someone would see the same version of iVote in the polling booth? It would print out the ballot paper and they would put it in a box.

Mr GREEN: That is an audit trail approach to electronic voting. Someone votes, they get a slip and on their way out they put it in the ballot box. This provides an ability to audit the electronic vote. If something went wrong with the computer there would still be a ballot box full of votes to be counted. I think that is a perfectly good method of providing safety. I point out that it may be necessary to come up with some form of Q code or barcode that is also printed on the paper receipt so that it could be scanned if the paper ballots had to be counted.

Mr ADAM CROUCH: Paper ballots currently are barcoded. There would be a similar sort of result, but there would still be the paper backup, should it be necessary. That would also speed up the ballot count because it would be digitally recorded at the time.

Mr GREEN: Yes. The proposals I have heard for electronic voting essentially go down that path. In the future, when there is trust and the system is accepted you could start to drop the paper ballot. Trust is an important part of elections. The Keelty committee made the point that our elections are built on trust—trusting that the ballot box will be delivered to the returning officer. If you relied on fully secure delivery companies to take the ballot boxes from the polling place to the returning officers overnight you would never be able to run an election in this country. There is always a degree of trust.

People trust the paper ballots. They think they are all being counted correctly. Though if they have ever seen an upper house or a senate counting centre they might have a bit more doubt about these sorts of things. But if you have this sort of trail, people feel that there is something there which allows them to keep trust in the electoral system. Trust is the important thing—that people believe that the system is not being rigged. If printing out a paper receipt in the early days of electronic voting makes people feel they system can be trusted better then I think it is a good idea. I point out the ACT already does electronic voting for all of its prepolls.

The Hon. Dr PETER PHELPS: What about a situation where a person made a deliberate choice to cast an informal vote? In other words, "I do not like any of these people." Do you have a system which would allow a person to cast a deliberately informal vote?

Mr GREEN: You have to have. The current system does do that. You will be told, "This is an informal vote," and you move on. The point I would make is that if you force people to cast a formal vote—if it says, "You must cast a formal vote,"—what is to stop them simply walking away from the polling place? Then you have to reset—

Mr ADAM CROUCH: Or just not putting the ballot paper in.

Mr GREEN: Well, yes. I think you have to allow people to cast an informal vote.

The Hon. Dr PETER PHELPS: You can under the current system, but if you have a system whereby you have to input data into a computer and then print it off—

Mr GREEN: It would print your receipt, which is an informal vote. So nobody knows you have cast an informal vote. You put the informal vote into the ballot box.

The CHAIR: None of the above.

Mr ADAM CROUCH: I think what Dr Phelps is saying is if you are putting in your iVote, effectively I am going to iVote online, the online vote and the paper needs to match up. Effectively the iVote system would have to allow for you to vote informally.

Mr GREEN: Yes. And if you voted informally it would have to print a receipt which you put in the ballot box. If you just walked out without a bit of paper, they would be saying, "You have to put your paper in the box." If you have voted informally and do not get a receipt, it would be revealed that you voted informally.

Mr ADAM CROUCH: We mentioned voter identification [ID]. If there is an augmented iVote system at a polling booth and I, Adam Crouch, go in to vote at whatever polling booth in Terrigal, the system then does not allow you to vote a second time. Effectively, Adam Crouch cannot go to a second polling booth on the day and say, "I am Adam Crouch. I want to vote here." It effectively would stop you from doing multiple votes.

Mr GREEN: Currently we separate the roll mark off from voting. In the ACT which has gone down the path of polling place electronic voting, when you turn up they mark you off the roll and they give you some sort of code which initiates the electronic voting. There is no connection between that vote and the electronic roll. One advantage of prepoll voting is the ability to store and update each day that somebody has prepoll voted, which you could use as a check. But unless you tie someone's ID to their vote you cannot do that sort of thing.

Mr ADAM CROUCH: If you go back to the question about the augmented iVote system, when we see the results for Herbert, as a good example, where 30-odd votes made the difference, if 40 people went and voted twice that day, that could be the difference in that result. I suppose the reason the prosecutions are so low is that there is no way to prove it.

Mr GREEN: That is right.

Mr ADAM CROUCH: It is very difficult to prove it.

Mr GREEN: If you want advice from me on how to deal with people who vote multiple times—and there is a very tiny number of people who vote in a multiple way, and we know who they are—what I would do is change the law so that someone who appears to have voted more than once, while you cannot prove it but it happens time and time again with this person, is made a special voter, a silent voter. Then when they vote they have to cast a declaration vote. I do not see why everybody in the country should have to present ID because there are a few anarchists out there.

The Hon. Dr PETER PHELPS: That is a great idea.

Mr GREEN: I understand there are some people who are known to the Electoral Commission as always trying this on. If you made them a silent voter, they can still vote—you have not removed any right—but you require them—

Mr ADAM CROUCH: But they have to make a declaration.

Mr GREEN: With the multiple votes, we need to move down the path of making the roll mark off available, particularly in urban areas, to other booths. Some electoral commissions have tried this where they have conducted by-elections. They have wi-fied the rolls together so they know when someone has voted. Of course you have to accept that there is a degree of error by the polling officials. In the Chatsworth election Court of Disputed Returns case in Queensland there were 30 instances of multiple mark offs. The court in its judgement methodically went through it and showed that only two of them were actual multiple votes. The other 28 were clerical error. In most cases when it goes to court most of them turn out to be clerical error. A lot of the

others turn out to be confused elderly—they have voted in the nursing home and then their children have taken them to vote again on Election Day. Then there are a few malcontents. But the numbers of mark offs which are multiple are much higher than the evidence of multiple voting. So even if you wire up all the votes you still have to have the ability to cast a declaration vote if you have turned up and your name is crossed off. It may have been a clerical error.

Mr ADAM CROUCH: I guess the only benefit would be if it showed where you were marked off—for instance, that could alleviate the retirement village case. If it says, "Mr Smith, you voted at your retirement village," Mr Smith can say, "Oh, did I? Okay."

Mr GREEN: How many John Smiths or Ian Smiths are there in an electorate? The biggest incidence of wrong mark off is two people at the same address with the same family name—for instance, Robert and Ronald Walker. That sort of case was occurring in Chatsworth. There are those sorts of cases where the name gets crossed off. If you then did not allow them to vote because the rolls were all wified together, then you have denied someone a vote on a clerical error. You still have to give them a declaration envelope and it can be checked afterwards.

The CHAIR: Are there any further questions? If not, thank you very much. We always love having you here at this Committee.

The Hon. Dr PETER PHELPS: Hear, hear.

The CHAIR: The Committee may have some supplementary questions to ask you, the responses to which would be required within two weeks of when they are sent to you. Would you be happy to accept those questions in writing?

Mr GREEN: Yes, certainly. I have some particular information on the iVotes and preferences—I did have that statistic and I will pass it to the Committee.

The CHAIR: Thank you very much. We appreciate your time.

Mr GREEN: Thank you.

(The witness withdrew)

(Short adjournment)

NATHAN QUIGLEY, State Director, NSW Nationals, affirmed and examined

THOMAS AUBERT, Deputy State Director, NSW Nationals, affirmed and examined

The CHAIR: Before we proceed do you have questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Mr QUIGLEY: No.

The CHAIR: Would you like to make an opening statement before we proceed to questions?

Mr QUIGLEY: Thank you. I am appearing here almost 12 months from the time that we initially made a submission to this inquiry. I understand that the Committee has had more pressing business in the meantime and quite rightly so, but I have Mr Aubert along with me who was directing all of our compliance through the last campaign and managing a lot of communication with the Electoral Commission. Due to the 18 months that have elapsed between the election and this point in time and due to Mr Aubert's firsthand experience through that process I might be relying on him for more intricate details if they arise.

Obviously the reason for the delay was that a separate inquiry was held last year into the final report of the Expert Panel on Political Donations. We put in a quite lengthy written submission and made an oral submission to that inquiry. In our consideration our submission to that inquiry supersedes and elaborates on the remarks that we have made in relation to donations in this submission, so we will not be going into those. We are going to concern ourselves primarily with aspects that directly relate to the conduct of the 2015 election.

By far and away the issues of most concern to us in 2015 centred around the inability or unwillingness of the NSW Electoral Commission to enforce compliance with certain aspects of the Parliamentary Electorates and Elections Act and the Election Funding, Expenditure and Disclosures Act. We are going to discuss two separate instances in particular. I will deal with the first, which relates to what we believe was an illegal third party campaign by the Wilderness Society, and my deputy Mr Aubert will deal with the second, which relates to illegal signage on polling day.

On Wednesday 18 March, 10 days out from the election, Luke Foley as Opposition leader announced that he would shut down coal seam gas in the Pilliga if he was elected to government. This came as a surprise to many people but not to the Wilderness Society, who had already created a high-quality television advertisement about the issue. I am able to provide a copy of the commercial but it is still publicly available on YouTube. In essence it was launched one day after the announcement and it said, "Labor said they will ban CSG from the Pilliga. What do you say, Mr Baird?" It is blindingly obvious to anyone who views it that it is an electoral matter that it is advertising and it is authorised as such in accordance with the Federal Broadcasting Services Act.

This advertisement played in high volume in the Lismore and Tamworth markets from at least 20 March, which is the first time we picked it up, until the blackout on 25 March despite us lodging a formal complaint with the NSW Electoral Commission on 21 March. It took four days for the Electoral Commission to respond to our complaint, by which time the blackout was almost in effect. The question is during this time how many voters in the marginal seats in these media markets saw this commercial? It is a clear and flagrant breach of the Election Funding, Expenditure and Disclosures Act because the Wilderness Society was not registered as a third party campaigner for the election and, to the best of my knowledge, apart from being asked to pull the advertisement, the Wilderness Society seems to have suffered no consequences at all for flouting a serious provision of the law. Even worse, the timing of the commercial's production—and I have a screenshot I picked up yesterday from *Facebook* of the director saying that they shot it over the weekend of the 14th and 15th, three days prior to the announcement—indicates at the very least that someone in the Wilderness Society had knowledge that this was going to happen and, at the worst, possible collusion with someone inside the Labor camp.

I ask the Committee: What use are caps on electoral expenditure if an illegal third-party campaign like this can run for five or six days during the last week of an election campaign without consequence? It is quite frankly scandalous and it reflects incredibly poorly on the Electoral Commission that it was allowed to go on for so long. This fundamentally is one of the main issues we had with the Electoral Commission during the last election, with their new enforcement and compliance powers but their unwillingness to actually act on them. They have a service charter, which is focused on things like fostering participation and seamless service delivery, which is all very nice. But we would really appreciate it if more effort could go towards upholding the laws of this State with which they are charged.

It was for this reason that I was reading through the Electoral Commission's submission to this inquiry. I had a bit of a chuckle when I read the recommendation about passing off—suggesting that we create an offence for passing off material on election day that looks similar to the Election Commission's material, which both sides did quite legally in our seats. Our experience with the Electoral Commission on polling day suggests that even if this offence was created, there would be no action taken at all to enforce it. I will now pass over to Mr Aubert, who will speak of our prior experience with the Electoral Commission enforcing the laws on polling day.

Mr AUBERT: As Mr Quigley alluded to, the first major issue on polling day, which is noted at length in our submission to this inquiry, relates to Election Day signage in north coast electorates. The Parliamentary Electorates and Elections Act is clear: Polling place signage must not be greater than 0.8 metres squared. This is roughly the size of an ordinary election sign that sits on fences and you would ordinarily see on polling booths. That Act also, in section 151D, states that the commission staff on polling places and in districts can remove signage that is in contravention of the Act, and thus there is a clear power by which the commission can remove offending signage from polling booths.

On the morning of Election Day the commission was informed by myself prior to polls opening that Opposition parties had erected signage in contravention of the Act throughout the Ballina and Lismore electorates. In most cases the offending signage was at least double the size allowed by section 151B of the Act. No response was received once polls opened from the commission. The commissioner himself was made aware of the situation personally. The Nationals were then advised by the commissioner that the offending parties were arranging to cut the signs down to the allowable size and were not being required to remove them in the interim. Throughout the morning The Nationals repeatedly highlighted illegal signage and the locations to the commissioner, and at approximately 11 a.m. the commissioner indicated to us that the ALP had informed him that all illegal signage erected by that party had been cut back to the correct size. This had not actually occurred.

The National sought that the Electoral Commission utilise section 151D and instruct their staff to remove the offending signage. However, throughout the course of the day the Electoral Commission opted to take the advice of the opposing parties as to whether the offending posters had been taken down. As outlined in our submission it would seem a far more appropriate and efficient means by which to ascertain what was actually happening on the ground in those electorates if the commission had dealt directly with their staff at the

affected booths rather than those who had committed the breach. At 11.21 on polling day the commissioner indicated that he had finally instructed his staff to remove the offending signage, but still at 1 p.m. commission staff in the affected electorates were seeking offending parties to cut the signage down—that means literally cutting the sides off to make it 0.8 metres squared. By the close of polls offending signage was still erected at several booths.

There are a number of points The Nationals wish to make on the signage issue; first, to indicate an inability of the commissioner and their staff to understand the significance of the illegal signage. In two very marginal electorates signage at least double the size, and in some cases even larger, than the legal limit gave the offending parties an unfair advantage. Further, the events indicate a complete breakdown in communication between the commissioner and their staff. It was quite clear that apart from the complaints received from The Nationals, the commissioner was unaware of the illegal signage. This in itself demonstrated that commission staff were not given appropriate training and support in the lead-up to polling day. Lastly, the commissioner took at least three hours to direct in limited circumstances local commission staff to remove the offending posters if the offending parties did not.

The question needs to be asked: If this is the approach the commission takes to this significant breach of the Act, how prepared are they to deal with more serious issues like voter intimidation or electoral treating? A further significant issue on polling day was the crashing of the commission's registered material database. This meant that in the electorates of Tamworth, Monaro, Ballina and Upper Hunter registered material was not able to be viewed by the commission staff or representatives of candidates. Further, in Tamworth only some of the registered material was able to be downloaded, giving the impression that some candidates were handing out flyers in contravention of the Act. Due to the number of electorates impacted, it is clear that there was an inherent flaw in the system and that this ought to be improved for the next election. That is the end of my statement.

Mr QUIGLEY: The size of election signs might appear to be a trivial issue in the scheme of things, but it is obviously a different matter when you are rolling out reams of booth wrappers as one party was doing on the North Coast. The point remains that we have these laws and the Australian Electoral Commission [AEC] is charged with enforcing compliance. There are times when it seems as though the commission does not take every aspect of these laws seriously. If the commission is not taking them seriously, how can we expect the parties to do so?

I wish to address the timing of the ballot draw. At this election the ballot draw was conducted two-and-a-half weeks from polling day, on 12 March. That was too close to the election for the commission to be able to produce ballot packs and to send them out to registered postal voters and people who had applied to postal vote with the certainty that they would arrive in time for the voter to complete the form and to return it. That is a particular issue in rural areas where there are unreliable postal services and sometimes once-a-week postal services. I understand that the commission is probably keen to move as many postal voters online as it can in the future. That is a worthy cause, but postal votes will be an important part of our voting system for many elections to come. That is particularly true for remote and rural voters. It is obvious to me that if we moved the ballot draw forward by, for example, a week, we could easily remedy this issue. There was a number of complaints throughout the campaign from across the State from people who had applied for a postal vote and who had not received their ballot papers. Obviously that is frustrating and it causes anxiety.

The Hon. ROBERT BORSAK: You have a recommendation to that effect.

Mr QUIGLEY: Yes.

The Hon. ROBERT BORSAK: How many extra days do you believe are required—three days, five days, seven days, 10 days?

Mr QUIGLEY: It is my understanding that there are 60 days allowable between the issue of the writs and the return. I understand that 42 of those were used for this election; that is, the results were finalised 42 days after the issue of the writs. It seems to me that an extension of a week would be possible in that scenario.

The Hon. ROBERT BORSAK: In other words, you want an extra seven days?

Mr QUIGLEY: Yes.

The Hon. ROBERT BORSAK: I refer to your opening remarks dealing with enforcement. Your recommendation is not specific, but the examples you provide about polling booth management in various places indicate that those concerned were not diligent enough or perhaps did not understand their obligations under the law. Do you have some more specific suggestions about Election Day enforcement policies?

Mr QUIGLEY: The commission had that duty for the first time at the last election. Obviously the volunteers who work on the booths are not accustomed to intervening in those cases. They need more direction from the top down and better communication about the procedures that should be followed in those circumstances.

The Hon. ROBERT BORSAK: You are saying that time is of the essence. A polling day is finite.

Mr QUIGLEY: When I referred to communication and procedures that relates to training and education in the weeks leading up to polling day about what do in those situations.

Mr AUBERT: In relation to unlawful signage, section 151D could be amended to change it from a discretionary power to an obligation. That would force the commission to enforce the relevant law.

The Hon. ROBERT BORSAK: You are saying that it is a discretionary power at the moment.

Mr AUBERT: Yes.

The Hon. ROBERT BORSAK: And you would like it to be compulsory and an absolute power.

Mr AUBERT: Yes.

The Hon. ROBERT BORSAK: I now refer to your recommendation dealing with caps on political donations. You refer to transfers made by the party to an endorsed candidate or Member of Parliament being exempt from donation caps. I assume you are talking about from campaign accounts at the party level to campaign accounts at the local level, or do I have that wrong?

Mr AUBERT: It is a suggestion designed to avoid the need to invoice candidates. The Nationals do not operate local campaign accounts.

The Hon. ROBERT BORSAK: Do you do the same as The Greens; that is, pay centrally, invoice and then write it off as a bad debt?

Mr AUBERT: That is my understanding.

The CHAIR: Will you take that question on notice?

Mr AUBERT: Yes.

The Hon. ROBERT BORSAK: When you say you would like the cap removed, do you have a specific level? Do you want it removed completely or increased?

Mr QUIGLEY: It is money that has already been subject to donation caps on the way into the party. It is basically an internal transfer for the purposes of conducting an election.

The Hon. ROBERT BORSAK: I understand. You make a recommendation relating to levies. Why is that a problem for The Nationals?

Mr QUIGLEY: We had a culture in the New South Wales Nationals of not levying our members. We fundraise independently as a party unit. We have had a culture for many years and obviously that is impacted by these donation laws. Members and their electorates take major responsibility for campaigning and fundraising themselves. For that reason we have not sought to impose a levy or centrally to control the salaries of the members who are elected. We would like to continue that. At the moment the discrepancy between donations made by the candidate—for example, if they are at a local branch fundraiser and there is an auction, a member might buy a food hamper for \$200—is subject to a cap, but the money the parties levy each member over the course of a year is not. We think that is a discrepancy that needs to be fixed.

The Hon. BEN FRANKLIN: The first thing I want to talk about is the registration of polling day material. Obviously the issues that you raised in terms of the commission's fundamental failure to provide that information effectively and professionally are alarming. The Committee heard Antony Green, the last witness, suggest that all of this registered material should be placed online so that everybody can see it and have access to it on the day. Would you support that?

Mr QUIGLEY: We could; yes. It would certainly be better than the current system.

The Hon. BEN FRANKLIN: I draw your attention to postal vote applications. Can you elaborate a little on your experience with the Australian Electoral Commission? You raised some concerns in your submission. One of your recommendations is that an investigation be undertaken into the processes associated with the administration of postal vote applications for the 2015 election. Do you have any suggestions about what can be done to fix the problems, apart from increasing the length, which is well noted?

Mr QUIGLEY: I note that the correspondence between the commission and our party on this issue was conducted by one Ben Franklin.

The CHAIR: The very learned Ben Franklin.

Mr QUIGLEY: We have a fixed election date, and the time for making applications for postal votes can be some time out from the election. In this case it was in the first couple of weeks of February. They come either to our campaign offices or directly to the commission. There they sit and they await the close of nominations and the ballot draw. There was a period, I think, of five days between the ballot draw and the time when the Electoral Commission first started issuing ballot papers, and, to me, that is a bit of a concern. I am not intimately familiar with the Electoral Commission's operations for this kind of project but five days, to me, does seem like a long lead time between getting the final list of candidates and being able to issue ballot papers by post.

It is my understanding that obviously from the 17th too there was a large backlog of postal vote applications that they had been receiving for a month and that took a number of days, as I understand from the correspondence, to clear until about the 20th where they were back to processing what came through on a daily basis. Firstly, the turnaround timing in issuing them for a start from five days, but, harking back—I am sorry if I am repeating myself—to a longer period between the close of nominations and the ballot draw and the election. It also means that there is one week's worth less of postal vote applications piled up in the Electoral Commission waiting to be processed. So it immediately makes the job easier at that front end as well.

The Hon. BEN FRANKLIN: And this would be a significant issue, I assume, because particularly in more remote areas there are fewer postal services and this can actually disenfranchise people.

Mr QUIGLEY: Absolutely. In theory there may have been some postal vote applications that had been sitting there since mid-February that were not posted out until 20 March, and you are talking a three-day lead time to get to the local post office in some areas and if you have got a weekly mail service you are immediately on the election date anyway for receiving the ballot papers, and that is before filling out your vote, getting it witnessed and getting it sent back to the Electoral Commission, which can take a long time in itself—and Australia Post services are not getting any speedier; we all know that and the Electoral Commission acknowledges that. I think this expectation that a postal vote that is sent out on the 20th is going to have an easy turnaround to get to the person, be filled in and make it back by the closing date I think is a little rose-coloured given the state of postal services in many parts of the country.

The Hon. BEN FRANKLIN: So is it fair to say that your two recommendations in this area are, one, increasing the time by a week between the nominations being drawn and the polling date and, two, that the Electoral Commission provides enough resources so that they can clear the backlog immediately as soon as the draw is done. Is that fair?

Mr QUIGLEY: Absolutely.

The Hon. Dr PETER PHELPS: Going back to the instance of the Wilderness Society and the running of the campaigns, how would you envisage an enforcement order being undertaken? Simply the Electoral Commissioner calling up the Wilderness Society saying, "Cease and desist with your ads" or some sort of ability to get injunctions against them through the courts? Give me the mechanism of how you see a situation like that occurring when there is an unlawful third party campaign taking place. What is your preferred option in terms of the practical method of causing it to cease?

Mr QUIGLEY: The practical—and, by the way, they continued campaigning using pamphlets on the ground well after they had been told they were not third party campaigners and were asked to pull the ad. Firstly, the action was not quick enough. We submitted a complaint on the 21st and we received notice on the 25th, four days later, saying that they had been asked to stop these ads. Because we had people on the lookout for them, we had people phoning in throughout this time saying that the ad was still running. That is four nights' worth of television in a marginal seat with an illegal ad running on the TV. It is just not good enough.

So, firstly, their request to pull the ads should have been immediate and it should have been backed up with an injunction, I think, if that had not been complied with. Secondly, from the very fact that they kept campaigning on the ground indicates to me that the Electoral Commission did not do what it should and scared the absolute living daylights out of them: "If you do not cease we will fine you"—they should have been fined anyway.

The Hon. Dr PETER PHELPS: Have you been given any indication of them subsequently being prosecuted or fined for their actions?

Mr QUIGLEY: No. We had an email from the Electoral Commission saying that they will not comment on ongoing case reviews or investigations.

The Hon. BEN FRANKLIN: We might raise that with the Electoral Commission when they attend.

The Hon. Dr PETER PHELPS: I am sure they probably will not comment on ongoing issues. But are you saying that the Electoral Commission should have a power to, in fact, issue the cease and desist to the media organisation which is running the ads as well or simply with the organisation which is purportedly running those ads? Because you could get a recalcitrant third party who just goes, "Stuff you. We're running them".

Mr QUIGLEY: Well, yes. Ads cannot air without the approval of free TV. For example, if an ad was found to be improperly authorised under the Broadcasting Services Act, that does affect the licence of the broadcaster and they will not air the ad or they will pull it out if it is running already. It is a nice thought and if that power could be implemented I would be very keen for it to be, but it would then tie into the broadcasters' licences, I would imagine—

The Hon. Dr PETER PHELPS: Which is Federal.

Mr QUIGLEY: Exactly, and so would require intervention at a Federal level. The bottom line though is even after they were asked to pull the ad they had campaigners on the ground with paid pamphlets, which indicates that they were not at all scared of any enforcement by the Electoral Commissioner.

Mr AUBERT: I can see no reason why media organisations cannot be enjoined at a State level to prevent these ads from going to air.

Ms MELINDA PAVEY: You referred in your submission to disability access in some of our seats. I know that you had a submission from the electorate that I represent, Oxley; a lady had broken her arm going to one of our booths. I am just wondering if you have had any feedback yourselves from the Electoral Commission. Access and stairs and parking for elderly and disabled people seem to be ongoing issues. Have they responded in a fulsome way on that front?

Mr QUIGLEY: No, we have not had any communication from them on that issue.

Ms MELINDA PAVEY: Do you see it as an area where the parties are not being listened to by the Electoral Commission or have you thought of other ways to help—that there could be an analysis of some of these problem-booth areas?

Mr QUIGLEY: Particularly in relation to pre-poll, that is one of the main methods. People who have limited mobility are often keen to vote pre-poll because it does away with the hassle of polling day. We have had issues over the last couple of elections. We switched a lot of booths in the 2011 election because Building the Education Revolution was underway and therefore a lot of booths at that election were new and a lot of booths in 2015 were moved back again. Particularly with pre-poll, being able to rely on a venue and getting the bookings in far enough out, being able to rely on a venue election-in, election-out, as the pre-poll venue and make sure that the access is there and identify any problems election to election and fix them that way and know that you have got that booth there for the next time I think is a very important strategy—it is stability in terms of where the pre-poll is—and probably for the limited-access booths I think too. A new booth that has been identified as a suitable booth for voters with limited mobility I think should absolutely be scoped out and assessed quite thoroughly, but also an attempt made to retain those booths that are working well for that purpose for the next election.

Ms MELINDA PAVEY: Could I just confirm in my mind your evidence just before, Mr Quigley? It is 17 months since the last State election?

Mr QUIGLEY: It would be pretty close, I think, yes.

Ms MELINDA PAVEY: And you still have not had any final recognition or determination from the Electoral Commission in relation to that Wilderness Foundation issue?

Mr QUIGLEY: No.

Ms MELINDA PAVEY: You got the email saying that it is part of an ongoing investigation. Was that the word?

Mr QUIGLEY: That is from 26 March.

Ms MELINDA PAVEY: This year?

Mr QUIGLEY: No, last year. We did follow up another issue in relation to the query we had about a third party campaigner on a slightly smaller scale. That was with prompting and that occurred in April after we chased it up.

Mr AUBERT: April 2016.

Mr QUIGLEY: Yes, April 2016 so we have not gone back to them on this issue. We have gone back to them on another issue and it was over a year later and they had not come to us; we had to ask them what happened to it.

The Hon. COURTNEY HOUSSOS: I will follow up on pre-poll voting centres. The Greens suggested that there should be a little bit of leniency in relation to the question of the six-metre rule and the way it is applied at a pre-poll voting centres. Sometimes that is because it is raining or people are out in the sun or in my personal view obscuring a shop or something that is next door. Do you have a position on allowing a bit more leniency in individual circumstances at pre-poll voting centres?

Mr QUIGLEY: It is a question of policy for the individual returning officer and the booth manager. In my experience that currently happens. I do not think any change is necessary to make sure that happens. The six-metre rule is obviously very important, especially for access for people who are not quite so mobile. But I have not really ever come across a situation where a polling booth manager has not been reasonable in its application under the current system so I do not see any need to change that.

The CHAIR: Would you recommend a limit on how many booth workers one could have at a pre-poll? For example, I went to a seat in the Federal election to observe the pre-poll and the two major parties had close to 14 or 15 booth workers each in a very limited space, let alone all the other parties that had three or four people. There were something like 50 people trying to hand out bits of paper.

Mr QUIGLEY: I am not a massive fan of rules for the sake of rules. I am not sure that 14 people on a booth is that worthwhile but if they want to do it I do not see any reason to institute a rule to stop it. It is a very social occasion.

The CHAIR: It was too.

The Hon. Dr PETER PHELPS: I refer to your concerns about the issue of levies on members of Parliament as opposed to donations. If a member donates to their own political campaign, that is theoretically unlimited, is it not, in the same way that levies are? For example, if Mr Taylor goes to Mr Crouch's SEC function and buys a cricket bat for \$500 that is a donation. But if Mr Taylor goes to his own function and buys a cricket bat for \$500 that is a contribution to his own re-election and thus theoretically is unlimited as the levy proposal? That is my understanding.

Mr QUIGLEY: No, the party would be receiving that second donation to its State campaign account, I believe.

Mr AUBERT: It depends on the structure of the party.

The Hon. Dr PETER PHELPS: But it is a member financing his or her own election campaign. Arguably if I went to Mr Taylor's SEC prior to 2015 it would be a donation because I am not up for re-election at that stage, so I would be making a donation. But if I bought a hamper for \$10,000 at a function which I ran for the 2019 election I do not see that that would be an unlawful donation because the money would be used to financing my own re-election because I will be appearing on how-to-vote card on that day.

Mr QUIGLEY: It would depend on the structure of the party.

The Hon. Dr PETER PHELPS: That is true.

Mr QUIGLEY: In the case of The Nationals it would be a donation to our State campaign account and it would be subject to the caps and all the others.

The Hon. Dr PETER PHELPS: Do you not have individual SEC entities?

Mr QUIGLEY: We do.

The Hon. Dr PETER PHELPS: And the money hypothecated against them?

Mr QUIGLEY: But it is also considered part of our State campaign account and a donation to one of those is a donation to the party.

The Hon. Dr PETER PHELPS: Yes, but a donation to the SEC dinner of Mrs Pavey is hypothecated against her campaign and so therefore if she pays money at that dinner she is essentially self-funding her own campaign which is theoretically unlimited in the same way that the levy is?

Ms ANNA WATSON: Would it depend on the accounting practices of the party?

Mr AUBERT: Yes, it would.

The Hon. Dr PETER PHELPS: No, because we have already said that even if there is a central campaign, if the money is hypothecated against an individual campaign that is considered to be financing—

The CHAIR: You may want to take that question on notice.

Mr AUBERT: It is not a contribution to their own campaign although generally it will vary as to how parties have structured it but for a contribution to a candidate's own campaign to be considered as such it would need to be deposited into a specific campaign account with their name. So larger parties, including The Nationals—

The Hon. ROBERT BORSAK: The Act generally talks in terms of "accounts" meaning bank accounts, does it not?

The Hon. Dr PETER PHELPS: I can ask that question to the New South Wales Electoral Commission.

The CHAIR: There has been a lot of talk about moving to electronic voting. New South Wales has iVote. Do you support, over a period of time and a number of elections, a fully fledged electronic voting system on Election Day? I am happy if you want to take this question on notice.

Mr QUIGLEY: I think the act of physically voting and of attendance at a polling place—

The CHAIR: Still turning up on Election Day but it would be electronic so they can press a button and get the result pretty quickly.

Mr QUIGLEY: As applies in many places in the United States. I think there is an expectation out there at the moment, especially given the length of time it took to determine a number of seats in the Federal election, that there will be some move towards more electronics, such automated forms of voting. We have a public now that is a little bit impatient with old paper systems such as the one we use and because they are not dealing with it on a day-to-day basis, and that everything else in their life is so instant, I think the tolerance for dealing with it is diminishing day by day. I think that is probably inevitable and is not something that should be pushed back against unduly. But I would want to be convinced, especially given the issues we have with iVote at the last election, than I am now that it was not opening us up to any irregularities.

The CHAIR: Potentially a trial.

Mr QUIGLEY: Yes.

Mr AUBERT: First, they need to fix their current system. It is outrageous that parties were left off the ballot. Let us go no further until that is fixed.

The CHAIR: I refer to the number of polling booths in regional, rural and remote seats. I know that one seat has 80 and I heard some have more than 100. What is your view if we got rid of campaigning on Election Day, similar to what they have in the Australian Capital Territory where you are prevented from being one kilometre away from a polling booth?

Mr QUIGLEY: I would be against that. I think ordinary grassroots participation in politics is important. One of the most important ways our volunteers and members contribute is by showing their support on Election Day. I do not ever want to see politics reduced to just a system of politicians and advertising and election officials. I think there needs to be room in there for members handing out how-to-vote cards, for doorknocking and all of those things. I think it is a healthy part of our democracy.

The Hon. BEN FRANKLIN: Antony Green also raised specifically the issue of the size of the Legislative Council ballot paper suggesting basically that there are too many people on it now; people who have no hope of election at all. His suggestion was that we should raise the number of required nominators for Independent and ungrouped candidates and so forth from 15 to 50. Is that something that you would support? You are welcome to take the question on notice if you wish.

Mr QUIGLEY: Yes, I think I will. Instinctively I am probably disinclined to support that for the reason being that 50 people is a significant bar above 15. Whilst at the same time preserving the integrity of the

system and making sure it does not descend into a farce, I think we also do not want to be locking out the ordinary punter who wants to put their name on the ballot paper and have a go.

The CHAIR: You might like to take that on notice.

Mr QUIGLEY: Yes.

The CHAIR: Thank you.

The Hon. Dr PETER PHELPS: The electorate of Barwon is now more than 350,000 square kilometres and is likely to increase in future redistributions. Do you believe that there is an argument to be made for a Western Australian system of malapportionment for those very large electorates, to bring them down to a more manageable size?

Mr QUIGLEY: Yes. It exists in claims in a small way in Queensland as well. I believe it is quite sensible. As you said, only the biggest outback electorates are treated that way. This has been the National Party's position for a long time and it will remain so. We think that, beyond the one vote, one value, it is also important to have access to the member. That is particularly the case for an electorate like Barwon, which, apart from Broken Hill, does not really have a major centre.

The Hon. Dr PETER PHELPS: It is not like Vacluse, is it?

Mr QUIGLEY: No, it is not like Vacluse, but it is not like a massive outback seat such as the Federal seat of Durack, which has a limited number of population centres. The population is spread across Barwon in towns of 1,000 and 2,000 and smaller. It is a lot of work to get around and service it all. It is very hard for people there to get along to see their local member. It is a fundamental right of democracy to have access to the person who represents you in Parliament. I do not think our system is serving us very well in that regard at the moment.

Mr MARK TAYLOR: I want to return to the signage at Ballina, which you spoke of earlier, and the television advertisements by the Wilderness Society. You did not have a response regarding the television ads. Is an investigation into complaints about the signage still being conducted by the Electoral Commission?

Mr QUIGLEY: We made formal complaints on the day and sought an injunction. Once the moment had passed there was not much point in continuing.

Mr MARK TAYLOR: So despite your belief that a direct offence had been committed under section 151B, displaying the poster, you are of the understanding that the commission did not conduct an investigation?

Mr QUIGLEY: That is our understanding.

Mr AUBERT: Our legal representatives wrote, post-election, to the commission on this matter. I will have to take the question on notice to provide the response.

Mr MARK TAYLOR: So you do not know of any response?

Mr AUBERT: We did get a response. I believe that it was to the effect that no further action was being taken. I can provide that to the Committee subsequent to this hearing.

Mr MARK TAYLOR: Thank you.

The Hon. ROBERT BORSAK: You have not covered this in your paper, but you may have some comments on it. You may want to take on notice. Does the party have any view on the commission's current auditing processes for membership?

Mr QUIGLEY: Could you repeat the question?

The Hon. ROBERT BORSAK: Does the party have any opinion or ideas in relation to the current annual auditing of membership by the commission?

Mr QUIGLEY: This is the roll of members that we are required to keep as a registered political party? We might take that on notice.

Mr AUBERT: I am not sure. I handle the annual renewal of the party's registration. I am not sure what auditing process there is, apart from cross-referencing members' addresses to the electoral roll. Once they cannot be found at the address on the electoral roll they drop off. Other than that, I do not know of any other auditing processes.

The Hon. ROBERT BORSAK: There have been processes in the past where, apart from when someone registers as a member of a party, they have to affirm that they are a member and put it in writing. Some

parties have problems with registration—I know our party has—where members may have dropped off the membership roll or are no longer participatory members of the party but they are not checked once the original paperwork is submitted. Does that a concern you? You might want to take that on notice.

Mr AUBERT: We will take it on notice.

Ms MELINDA PAVEY: My question relates to testimony given earlier today by Antony Green in answer to a question from Ben Franklin on pre-poll counting on Election Day. There was a lot of confusion in 2011 about whether it was going to be counted. It ended up being counted at 11 o'clock at night. Mr Green suggested that we look at counting those votes from two o'clock in the afternoon, as is done in New Zealand. He said we may have to give consideration to having a scrutineer there. That would be problematic for the parties, given that everyone is out working the booths. Given that those votes are later retabulated and the data entered, would you consider supporting the proposition that pre-poll votes be counted, as long as they are kept confidential, from 2 o'clock so that we would have a better idea of results?

Mr QUIGLEY: The key is that they are kept confidential. There would have to be scrutineers in the room. One of the jobs of party scrutineers at any normal count, apart from making sure that everything is running transparently, is to update the party with the results.

The CHAIR: There would have to be a blackout.

Mr QUIGLEY: Yes.

The CHAIR: It would have to be like the budget lock-up.

Mr QUIGLEY: I am not sure that that would be feasible or achievable, given that there are many hundreds of pre-poll booths across the State. I do not know whether it would be feasible to keep people locked up and offline for the length of time that it took for the polls to close. In the four hours between 2 o'clock and 6 o'clock any release of results could potentially influence voting—for example, if the media got hold of the story at 4 o'clock and said that one party was clearly winning. For that reason, I would be disinclined to support that.

Ms MELINDA PAVEY: What if it were 4 o'clock?

Mr QUIGLEY: The closer you get to the close of the polls the better, although the temptation would always be there to wind it back. As much as I love good, quick results on the night, I think the integrity of the system is paramount. At the moment, the fact that all the votes are counted together after the polls have closed is an important aspect that we would need to retain.

Mr ADAM CROUCH: I want to return to the illegal signage in Ballina, which we have seen examples of. That signage should have been approved by the Electoral Commission prior to being placed. The signage was outside the approved parameters. It remained up for more than four hours on Election Day. The Electoral Commission relied on the offenders to remove or reduce the size of the sign rather than asking its staff to remove it. Would it not be more appropriate for the signage to be inspected by the returning officer at the beginning of Election Day? If it does not meet the approved parameters for that site for that day then it should be removed by the staff of the Electoral Commission. The Electoral Commission should not rely on those who put up the signage to remove it. From looking at the signage it is evident that it is illegal. The Electoral Commission should have asked their staff to remove it rather than allowing it to remain up for hours. The horse had bolted; by the time it was taken down of the day was over. Would that be something you would consider: that the Electoral Commission issues a list of approved signage, including the size and type of image, and if a sign differs from that it then it is removed by the returning officer and staff immediately?

Mr QUIGLEY: The idea of the booth manager inspecting the material before polling starts is a very good one. There would need to be explicit instruction to pull anything down that does not meet approval.

Mr ADAM CROUCH: That way there is no grey area. As you said, time is limited on Election Day. It took hours to get a fluffy answer that could have been interpreted by the returning officer in several ways.

Mr QUIGLEY: Yes.

Mr ADAM CROUCH: Thank you very much.

The CHAIR: There being no further questions, thank you very much for appearing before the Committee today. If the Committee has any more questions, would you be happy to take them on notice?

Mr QUIGLEY: Yes.

The CHAIR: The Committee will provide them in writing, and a response will be required within two weeks. Are you able to do that?

Mr QUIGLEY: Yes.

The CHAIR: Thank you very much.

(The witnesses withdrew)

GRANT LAYLAND, Treasurer, The Shooters, Fishers and Farmers Party NSW, sworn and examined

The CHAIR: I note that we have gone a little over time with our previous witnesses, but I will make sure that the witness has the full length of time allotted to him, should it be so required by the Committee. Thank you, Mr Layland, for appearing before the Committee today. Do you have any questions in relation to the process or any of the information that has been sent to you?

Mr LAYLAND: No.

The CHAIR: Would you like to make an opening remark before we hand over to questions from the Committee?

Mr LAYLAND: Sure. I would like to thank the Committee for the opportunity to appear today for The Shooters, Fishers and Farmers Party. As the most successful grassroots minor party appearing, we represent the interests of all minor parties. Unlike the larger parties—Liberal, National, Labor and The Greens—we are not a professionalised political party. Our members are elected from grassroots and our administration is conducted in a similar manner with five volunteers. That is the basis of our submission, which calls for: ballot draws for elections to be held at least 21 days before polling day to assist with printing and distribution of how to vote material; the Electoral Commission to provide means for candidates to sign and submit nomination forms; the proposal for iVote voting to be reviewed; the requirement to submit every social media post for review as election advertising to be scrapped; membership subscriptions to be used for campaign purposes as was previously the case; and election disclosure lodgement dates to be extended to bring them in line with unlisted companies, for example. One thing to note with the lodgement dates, our party lodged our electoral disclosures back in September-October last year and we are currently dealing with a compliance audit nine months later. Through that process we were given three weeks to respond—after nine months.

The CHAIR: Thank you, Mr Layland. Is that the conclusion of your remarks?

Mr LAYLAND: It is.

The Hon. ROBERT BORSAK: Would you like to elaborate a little on the 21 days you are talking about in relation to electoral material?

Mr LAYLAND: Sure. Given we have fixed terms, I cannot see a reason for the timetabling we have at the moment. It gives us very little time to arrange printing, distribution and so forth. Given the size of our party and our resources, we cannot get things printed locally. We do them in one batch to get economies of scale. The timing is quite important to us because we have to distribute those materials all around the State as well. We end up with volunteers driving all over the State in a short period of time to distribute material. Some of the timing was unrealistic. The how to vote material had to go in to the Electoral Commission. They said, "You get it in by a certain time the day before and we will approve it overnight." We had our printing arranged to meet that approval the next day, and it did not happen. It caused us a lot of grief, and then we had to get things distributed. We want that extended.

The Hon. ROBERT BORSAK: Would you like to elaborate on item 2, nomination of candidates? I notice you make some suggestions about automating the process there.

Mr LAYLAND: Again it was quite difficult for us to arrange that because we had our candidates spread all over the State. At the initial briefings we went to with the Electoral Commission they appeared to be saying that we could lodge individually-signed nomination forms. That was backtracked that we had to lodge one form signed by everyone in our group, so that form had to go around to all the individuals to physically sign. Again we had someone driving around with that form to get it in by the due date.

The CHAIR: I have a couple of questions. Your submission talks about the need for clearer guidelines around social media. Would you like to give us a little more information in relation to that? Obviously a good example is that prior to an election there is a media blackout but in social media there is not. Maybe you can touch on that issue as well.

Mr LAYLAND: Sure. Being the size of party that we are, we have moved to depending on social media to a large degree to get our messages out. During the State election we were in contact with the Electoral Commission as we were progressing our campaign. There was a lot of confusion as to what we had to get approved. We had to go up the chain to get answers and there did not seem to be strict policies around approval

of every post on social media. It ended up that they wanted to get approval of every post. Given the volume of posts and the direction we are heading of continually increasing volumes of posts, it is quite unrealistic to think that every post you make has to have the Electoral Commission approve it. What was the second part of your question?

The CHAIR: Do you have any other suggestions as to how we could tighten up the use of social media in campaigns?

Mr LAYLAND: Certainly guidelines would help—if the Electoral Commission looked into it and actually provided guidelines as to what needs approval and what does not need approval. Looking at the volumes we are doing, realistically they should not want everything to be approved. It is just not realistic.

The CHAIR: You may want to take this question on notice. Would The Shooters, Fishers and Farmers Party support, over a period of time or over a period of elections, the introduction of fully-fledged electronic voting—voters are still in attendance on election day but the vote is able to be accurately counted and things are made a bit easier?

Mr LAYLAND: I will take that on notice, given I am the treasurer and not involved with the actual campaign.

The CHAIR: Smart treasurer—thank you very much. This is another question I would like you to take on notice. Would your party support getting rid of campaigning on Election Day, a little like they do in the ACT where you cannot actually hand out at the polling booth on Election Day?

Mr LAYLAND: I will take that on notice, but as a small party we depend on campaigning and getting our volunteers out there on Election Day.

The CHAIR: Are there any other questions?

The Hon. BEN FRANKLIN: I have one question. Do you have any specific concerns from the 2015 election that you have not addressed in your submission about the Electoral Commission's performance and/or any particular problems that you encountered on polling day that you want to draw to our attention? We have heard a number of examples already. Again if you would like to take this on notice you are welcome to. I suspect there will be some recommendations about procedures for the Electoral Commission, so if there are any issues that you want to highlight we are very interested to hear them.

Mr LAYLAND: I will take on notice the part about the polling day. Again, being the treasurer, I am not into the detail of the campaign. I had my own personal experiences at the booths. As to the performance of the Electoral Commission around education and so forth of their positions, I think they could do a lot more to assist the parties, especially from the point of view of minor parties. They seem to change their decision making and their policies but there is no opportunity to educate the parties. Where they are going with things is particularly important in the run-up to an election. They make announcements that they have changed policies and you are left wondering, "What did you change?"

There is also no real opportunity for a minor party to have input into that apart from this Committee. Whether they go through a process of discussing things with the major parties I do not know. They certainly do not discuss it with us. My experience with regulators is that normally there is a period of drafting policies and discussions before a policy comes out and we do not see any of that.

The Hon. BEN FRANKLIN: There is no question that there have been significant changes over the past four or five elections. There seem to be more and more changes every election and I suspect it is going to be the same again in 2019. That must pose quite a burden on smaller parties like yours in terms of compliance. I note that you talk about compliance costs in your submission. Could you elaborate on the impact that this sort of administrative burden has on you?

Mr LAYLAND: I suppose I have an example of something I got last night. It was an email from the Electoral Commission saying that they have new policies. They send an email out so you think you will click through. It says to click through to news so you click through to news. It says that we have new policies in all these areas; these are our new policy papers. You click on it but there is nothing that tells you what the change was. You are expected to read all that. I do not know whether even the larger parties are able to track that. The expectation is that you track the changes. They do not tell you what they are. From our point of view we need to find someone to sit down and do that instead of the regulator telling us what they have done. There is no education process to assist us.

The volumes of returns that we have to do are staggering. Last election you had an interim donations report, an electoral disclosure document, a campaign funding claim and then you have administration claims.

The paperwork involved in that is mountainous. Then they go through every transaction and try to check them. I mentioned earlier that we are going through a compliance audit now. We have got five pages of queries down to items of \$30. Someone has to go through those. If I was to cost something like that out it would be in the thousands of dollars.

The Hon. ROBERT BORSAK: Just to stop you there for a second, would you care to tell the Committee what you do for a living and what your current charge out rate is?

Mr LAYLAND: I am an audit partner. I have been an auditor for 31 years. My charge out rate is \$575 an hour at the moment.

The Hon. BEN FRANKLIN: So the Electoral Commission owes you a few dollars, I suspect.

Mr LAYLAND: Yes. My nights are spent answering questions about \$30 and pointing to the files they already have of where that \$30 is. What that achieves for the electoral process I do not know.

The Hon. Dr PETER PHELPS: In relation to your concerns about the limited time frames in an election, a previous witness Mr Green suggested that the writs be issued on the day that the Parliament is dissolved, giving up to four and on average an extra three days. Would that extra three days be sufficient for you to manage your internal processes?

Mr LAYLAND: We are glad for any more time. Another three days would be good. If we could get more I would certainly advocate for more but another three days would be better.

The Hon. Dr PETER PHELPS: What is your preferred timeline in what I will call the first two weeks? After the dissolution of Parliament how long do you think there should be before nominations close and how long before the draw takes place? What is your preferred position on both of those?

Mr LAYLAND: Some of that would be dependent on the processes. I have mentioned the nomination process. If it was electronic we would not need a lot of time as opposed to paper. If it stayed on the paper processes, with the number of days, we probably need around two weeks to get the paper around. For the printing schedule and the distribution from the draw we are advocating 21 days. Our submission went through that.

The CHAIR: Do you want to take that on notice?

Mr LAYLAND: I can take that on notice as well.

The Hon. ROBERT BORSAK: At your point 5 you note there is a restriction on the use of membership subscriptions. Will you elucidate on that?

Mr LAYLAND: Sure. At the moment our membership subscriptions cannot be used for campaign purposes; they have to go into our administration account. We do not think our members join the party to have those funds used to meet administration burdens. The membership subscriptions should be used for whatever the party wants to use them for, be it administration or campaigning.

The Hon. ROBERT BORSAK: Do you think there should be a cap on membership subscriptions above what is currently there?

Mr LAYLAND: We have advocated for caps previously. For the actual membership subscriptions we could turn around and charge members a dollar to join and say that \$30 is a donation, but we have kept our subscriptions consistent. I suppose we could move around the legislation by doing that but we haven't.

The CHAIR: Thank you very much, Mr Layland. We appreciate your time today. There may be additional questions that the Committee may wish to send to you. Is it okay if we provide those to you in writing if there are any and obtain a response in about two weeks?

Mr LAYLAND: Yes, that is fine.

The CHAIR: Thank you very much.

(The witness withdrew)

(Luncheon adjournment)

GREGORY ALBERT BONDAR, NSW Director, Christian Democratic Party, sworn and examined

IAN EDWARD SMITH, Assistant Treasurer, Christian Democratic Party, sworn and examined

The CHAIR: Thank you for providing evidence today. Do you have any questions in relation to the material that was sent to you or the procedures? You have done it before, so I suspect not.

Mr SMITH: No, all fine.

The CHAIR: Please tell us in what capacity you appear before us today.

Mr SMITH: I am the treasurer and party agent for the Christian Democratic Party.

Mr BONDAR: I am the New South Wales director of the Christian Democratic Party.

The CHAIR: Before questions would either or both of you like to make an opening statement?

Mr SMITH: I think—

The Hon. Dr PETER PHELPS: You do not have to.

Mr SMITH: In hindsight, given what has just happened with the Federal election, the NSW Electoral Commission should be given a bit of a pat of the back in terms of the speed with which they processed the results, especially for the upper House—in a similar arrangement, basically, to what transpired in the process for the Federal election. There is obviously a disconnect there, but NSW EC got the job done a lot more efficiently than federally, it seems.

The CHAIR: Mr Bondar, do you have an opening statement?

Mr BONDAR: No, Mr Chair.

The Hon. ROBERT BORSAK: I note that you talk in your submission about education in relation to voting procedures, processes and whatnot. You talk briefly about that. What is your beef in relation to what is going on in polling booths on the day?

Mr SMITH: Basically, it was the people distributing the how to votes giving incorrect information to the voters, in particular in relation to the upper House telling them if they numbered more than one box it would be an informal vote. Obviously, we do not know how widespread that was, but it happened in two pre-polling locations that we are aware of. I got onto the Electoral Commission straight away and they supposedly addressed it all, but they addressed it, as far as we know in the—

The Hon. ROBERT BORSAK: So you are specifically talking about Electoral Commission workers?

Mr SMITH: Workers, yes.

The Hon. ROBERT BORSAK: You are saying that they are not sufficiently educated in the process?

Mr SMITH: Definitely not. There may be an education process, but the boxes are not being ticked off in terms of their understanding and assurance that they know what they are doing.

The Hon. ROBERT BORSAK: In your recommendation 2 you talk about advertising on television, in newspapers and on radio. Some advertising gets done—

Mr SMITH: Obviously, yes.

The Hon. ROBERT BORSAK: —but what you are saying is that not enough gets done. Is that correct?

Mr SMITH: The experience with the current Federal election tells us that people are still confused between different procedures.

The Hon. ROBERT BORSAK: I think the issue with the Federal election was that the commission itself was confused right up until the last minute.

Mr SMITH: I suppose regardless of that the voter is confused regardless of how much advertising is done. There is still confusion but from the State perspective, it is a case of ensuring the staff themselves know what they are doing.

The Hon. ROBERT BORSAK: Do you agree with the proposition that in the mind of the voter in many cases there is confusion between the differences in voting rules between State elections and Federal elections?

Mr SMITH: Definitely.

Mr BONDAR: Absolutely.

The Hon. ROBERT BORSAK: If that is the case, what you are really saying in recommendation 2 is that perhaps you should add the perspective that State elections are different to Federal elections and people

should be educated, especially now that the Senate voting ticket arrangement at the Federal level is similar but not the same as the New South Wales arrangements for the upper House. Is that correct?

Mr BONDAR: One of the things we did was our demographic, from our own membership, indicated that the demographics were fairly post 50. A lot of those people had a real confusion in understanding how the voting system worked, especially when referring to the Federal election. The Electoral Commission advertised that you must number boxes 1 to 6. That is incorrect, and a lot of our voters who are elderly and not attuned to voting were very, very confused. In fact, they could have just put a 1. The point I am trying to make is that the advertising issue has to be correct and factual. A lot of voters just do not understand—I am talking about the elderly.

Mr SMITH: Obviously, given the preferences that may exist in the media, stress can be put on one particular way of voting that can of itself mislead voters.

The Hon. ROBERT BORSAK: Recommendation 4 suggests a problem with the NSW Electoral Commission colour scheme and it potentially being used by a party or a candidate. Where did you encounter that?

Mr SMITH: There were posters around reminding people to number every square. The colours on those posters were similar to the NSW Electoral Commission poster colours. The small authorised statement at the bottom said that it was authorised by James Clements, Labor. It was not obvious which party put up the posters. That seemed to be an obvious attempt to confuse or manipulate voters. I do not know, but it could well have led to informal votes with people trying to number every square and misnumbering them.

The Hon. ROBERT BORSAK: That obviously ties into recommendation 3. You believe that a political party should always have to display its logo on all advertising material.

Mr SMITH: Yes. The name should be more prominent, not hidden in an authorised statement.

Mr BONDAR: We advised our voters in the recent election to look for the Christian Democratic Party logo. That is one way of identifying the party irrespective of the colours used on the poster.

The Hon. ROBERT BORSAK: You are advocating a fine of up to 10 times the cost of the material. It would be interesting to calculate that.

Mr SMITH: You could if a valid invoice was submitted in relation to those corflutes or whatever. You would know straightaway if you did that.

The Hon. ROBERT BORSAK: Can you elucidate recommendation 7? It is clear what you mean by booth managers enforcing poster size regulations, but how would you envisage that happening and when?

Mr SMITH: On the day they can tell the offending person to take down the posters. The person has the option, but if they disregard the direction, and provided the booth manager can prove that he gave a direction, a fine should be imposed.

Mr ADAM CROUCH: Would that not be the returning officer rather than the booth manager?

Mr SMITH: The booth manager may have to go to the returning officer and then come back. However, I would think that the booth manager would be the first one to give the directive. If that is not taken up, he could then refer the issue to the returning officer, who could hopefully turn it around quickly.

The Hon. ROBERT BORSAK: Did you make any complaints that were not acted upon quickly enough or at all?

Mr SMITH: Booths in the Rockdale electorate were blanketed in posters abutting one another. As I understand it, some local workers told the booth manager, but nothing was done.

The Hon. BEN FRANKLIN: I would like to pick up on that issue. You talk in that section about posters, their size and how some blanketed an area. You suggest that there should be a maximum number of posters at each booth. I assume you are suggesting a maximum number of posters per party or per candidate rather than an overall maximum?

Mr SMITH: Yes.

The Hon. BEN FRANKLIN: What number do you think is reasonable?

Mr SMITH: Twenty.

The Hon. PETER PRIMROSE: Some polling places are small and some take up a whole block. Why

20?

Mr SMITH: I think, depending on how many entrances, how many do you need around a particular entrance?

The Hon. PETER PRIMROSE: So it is a flip of a coin sort of thing.

Mr SMITH: Not really. I was thinking 10 to give a bit of a reasonable coverage. Twenty should be plenty.

The Hon. Dr PETER PHELPS: Can I follow up on that? You have a situation, for example, at the Queanbeyan East booth, which is literally about 1,600 metres around the circumference—it is, as Mr Primrose indicated, a single block in and of itself—whereas for the community hall in Australia Street, Newtown, 20 posters, if you joined them altogether, would probably be larger than the hall itself. I am a little concerned about the idea that there would be a maximum number of posters that you could have. I certainly appreciate the problem you have with abutting posters—that should be catered for under the existing rules—but to add a further layer of regulation to say a certain number of posters is all you can have strikes me as a little interventionist.

The CHAIR: Alternatively, would you support not being able to campaign on election day, like they do in the ACT where you have to have a minimum distance—I think it is a kilometre—away from each polling booth so voters do not have to deal with a thousand posters and a lot of people handing things out and all of those type of things?

Mr SMITH: I think unfortunately we have not reached the stage where the general populace are educated enough in terms of awareness of the parties that are standing, especially with the smaller parties, to give some information to a voter. A lot of people still do not make up their minds until they pass that threshold and they are filling out the voting paper. So we would be against that move.

The Hon. PETER PRIMROSE: Just from my own curiosity, going back to recommendation number four you used the phrase "similar to the official colours of the Electoral Commission". Can you tell me what those colours are?

Mr SMITH: The colours that were used on the poster were sort of an aqua colour and a pale sort of navy, if I remember rightly.

The Hon. PETER PRIMROSE: Are they the official—

Mr SMITH: I do not know if they are the official colours but they were very similar to what I would have perceived to be the Electoral Commission colours. They have got an aqua-blue type logo.

The Hon. PETER PRIMROSE: Without labouring the point, I see posters and material from the Electoral Commission in a whole variety of colours, including black and white. I just do not know; I am just asking, given your recommendation.

The CHAIR: Are these the colours you are referring to?

Mr SMITH: Yes.

The Hon. PETER PRIMROSE: Is that the official colour of—

The CHAIR: I do not know what is the official colour but that is their logo.

The Hon. PETER PRIMROSE: So that logo is the official colour?

Mr SMITH: I believe so.

The Hon. PETER PRIMROSE: So you could not use blue and white?

The CHAIR: Or do you mean, Mr Smith, something that replicates material that is similar, regardless of colour? Under your submission—I hope I am not putting words in your mouth—there would be some need for regulation to be able to do that.

Mr SMITH: Most definitely. I suppose the point behind the recommendation is in material that is intended to mislead, direct voters in a way that is—

The Hon. PETER PRIMROSE: But that is not what your recommendation is. With due deference to the Chair, you did not use the term "logo"; you were talking about colours and I am just trying to get my head around what are the official colours that would be prohibited from being used.

Mr SMITH: I think it would be largely the Electoral Commission that would have to put out a directive prior to the calling of an election to say, "Okay, these are the colours we are using for our material".

The Hon. PETER PRIMROSE: You are saying that you were concerned because of the colour scheme and that that was going to cause confusion. So you must have had a clear idea about what those colours were to say that it was misleading people.

Mr SMITH: Well, I think it was a combination. The colours were obviously chosen to give the impression that they were official posters.

The Hon. PETER PRIMROSE: So what you are talking about is that it was aqua and white?

Mr SMITH: It was two-tone, aqua and a bluish colour.

The Hon. BEN FRANKLIN: So you are suggesting, Mr Smith, that you do not want it to look like something has officially come out from the Electoral Commission when, in fact, it is a political party doing it, and under your submission you suggest that perhaps they can seek advice from the Electoral Commission if there could be confusion about that. That is the objective way that you would like to see that addressed?

Mr SMITH: Most definitely, yes.

The Hon. BEN FRANKLIN: So that anything that is out on a booth there can be no mistake that it is from the Electoral Commission, it is clearly from a political party. That is what you would like to see?

Mr SMITH: Basically, yes. Okay, if there was a clear labelling then maybe that would have overcome the issue.

The Hon. PETER PRIMROSE: But is it not required to be registered?

Mr SMITH: Not for posters, no.

The Hon. PETER PRIMROSE: That might be something worth looking at.

The Hon. Dr PETER PHELPS: Just moving off the topic of colour schemes for a moment, you, like other people, have indicated concern about the gap between the date of the ballot draw and pre-polling commencing. As part of your solution do you believe that pre-polling should commence later or that the ballot draw, and subsequently nominations, occur earlier?

Mr SMITH: I suppose we would prefer pre-polling to start later.

The Hon. Dr PETER PHELPS: That is in line with other recommendations that pre-polling be cut back to eight days. So maintain the existing time frame at the front of the scheme and then have a shorter period of pre-polling?

Mr BONDAR: That would be the gap.

Mr SMITH: That would be our preference.

Mr ADAM CROUCH: Can I just seek clarification on recommendations three and four? Going back to colour schemes and posters, am I right in assuming that should a particular poster be given to the Electoral Commission from people, such as the ones you mentioned earlier that were used at the last State election, you would want, for instance, in that particular instance the Labor Party logo to be clearly shown on that particular poster and would that also apply to third party posters that are registered and put up on the day? Because, again, we see a lot of third party information go out there. Should the logo of that third party also be covered under recommendations three and four?

Mr SMITH: Yes, I think that would be a good way to go.

The Hon. PETER PRIMROSE: So if, for instance, a poster said "Just vote 1", as a number did at the last State election, and was put up by a political party, they would have to clearly show their logo on that?

Mr BONDAR: Yes.

Mr ADAM CROUCH: Just a follow-up question: One of the submissions discussed earlier with regards to material at a polling booth was the potential recommendation that the returning officer be requested to view all of the material on the polling booth prior to the booth opening and approve what has been put up. Would you consider that to be a reasonable act and fair to make sure that illegal material, posters, are not put up illegally or of the wrong size, for instance? The returning officers are given a list of all the materials that are going to be put up because they have been registered. Do you think that would also be reasonable?

Mr SMITH: They are not given the posters; they are only registering how-to-votes under the current legislation, not the posters.

Mr ADAM CROUCH: They should be given a sample of all the material that would be registered to be put up and then go and approve that themselves—the returning officers themselves on the booth go and check it?

Mr SMITH: Whoever is responsible for that booth does a quick check at the start of the day. If there are any issues then they try and get it resolved pretty quickly and amicably and take it further if it is not resolved.

Mr ADAM CROUCH: Did your party lodge any complaints with the Electoral Commission on the day of the election in regards to illegal material being put up?

Mr SMITH: Not that I am aware of with the Electoral Commission.

The Hon. Dr PETER PHELPS: Just following up on that, Mr Smith, is your chief concern not so much with oversized posters but of the joining of posters to effectively subvert the 0.8 metre requirement, or the abutting of posters to subvert the 0.8 metre requirement?

Mr SMITH: As I said either way the 0.80 of a metre rule basically does not preclude someone coming and blanketing a polling booth with their posters because obviously you can put up several posters, unless a party comes along with posters that are narrower than 0.80 of a metre they are not going to have much chance to put up a regular poster in that space. I would see it that it is a case of both abutment and I would see the 0.8 rule actually being extended to what is a standard sized poster, a gap between posters for a given party.

The CHAIR: Do you support, subject to having appropriate checks and balances, going to a fully electronic voting system? People would still have to attend on Election Day to a polling place where there would be an electronic system to speed up the counting of the vote.

Mr SMITH: I would believe so. As you say if all the checks and the security concerns were addressed then just in terms of people having issues about people voting more than once then that should stop that issue in its tracks.

The CHAIR: You have made reference to the Federal election, although this Committee is investigating the State election, but have you learnt any lessons that we should take note of at a State level?

Mr SMITH: I suppose pre-polling. Obviously a lot more people are pre-polling these days. We have a rule that people are supposed to pre-poll on the basis of not being able to get to a booth on Election Day.

The CHAIR: Should we scrap that criteria?

Mr SMITH: You either scrap that rule and say, "Okay voting has now started and you can vote". I know where I was manning a pre-poll booth we had particular people encouraging shoppers and whoever to go to vote.

Mr BONDAR: Pre-polling in the Federal election, as you would be aware Chair, does not require any identification whatsoever. They could have gone and voted as many times as they liked.

The CHAIR: Do you support compulsory photo identification at elections?

Mr BONDAR: Absolutely.

The CHAIR: The concern that has been raised by previous witnesses today is that it potentially has the ability to disenfranchise people, particularly in remote communities, who might not have access to various forms of identification. How could the Committee investigate to make sure that it does not disenfranchise people?

Mr BONDAR: Would it be a case of and/or? It would be an and/or situation although on electronic voting, I note with interest that the head of the Queensland Government department has been hacked into. If we can assure that electronic voting is safe and secure then good, but it was interesting that even a government department was simply hacked into.

The CHAIR: What photo identification do you suggest? A driver's licence or a range of identifications?

Mr SMITH: It would have to be a range.

Mr BONDAR: A range of documents from driver's licence to Medicare or whatever it might be. There is a whole range of options Chairman.

The Hon. Dr PETER PHELPS: You make a recommendation in relation to registration of election material. A number of witnesses previously have indicated that they are quite happy with the system of

registration of electoral material but they believe it should be made available on a wider basis. In other words, all registered electoral material should be put up on a web site so that rather than just a small number of people seeing it, everybody has an opportunity to see it? How would you feel about a change along those lines?

Mr SMITH: I would have no complaints with that.

Mr BONDAR: We put all ours up on our web site. Ours is made available to our members and the general public because we get that question asked a lot. We have no problems.

The Hon. COURTNEY HOUSSOS: You have indicated you would support electronic voting but in your submission you note that the information technology systems need to be reviewed and you said subject to checks and balances. Will you explain more about what those checks and balances need to be on an electronic voting system?

Mr SMITH: I think with any major system obviously there would be a lot of testing required. I think parties need to have a place in terms of reviewing computer systems that affect them. My background is in information technology.

The Hon. Dr PETER PHELPS: Would you limit it to just the parties or would you open source the software which runs the system?

Mr SMITH: I think in terms of having more knowledgeable people to verify the system the better.

The Hon. Dr PETER PHELPS: Including the publication of code to the general community?

Mr SMITH: I would not release the code.

The Hon. Dr PETER PHELPS: How can you assess the validity of a system if information technology professionals do not have access to the code itself?

Mr SMITH: I think if you have stringent testing systems then you can be pretty confident, and hopefully the information technology people who are within the relevant developing area have the sources that they can utilise to verify that code, and there are tools available to do that.

The Hon. Dr PETER PHELPS: Yes, maybe but there is a general rule that the more eyes that see something the better the editing of the final product is.

Mr SMITH: You can only go so far. If the Electoral Commission or whoever is confident in the trustworthiness or whatever of those verifiers then, fine.

The Hon. Dr PETER PHELPS: That would be the same Electoral Commission which left two parties off the Legislative Council ballot paper.

The Hon. COURTNEY HOUSSOS: In relation to photo identification, earlier you said that anyone can just turn up and vote any number of times. Do you have instances of that that your party has reported?

Mr BONDAR: I am talking about the Federal election, and we complained to the immediate booth manager at the time. I am not sure if you have ever pre-pollled but turning up, there was absolutely no need for any identification whatsoever. You just went in there and said "I would like to vote". "Yes, fine". Some of our volunteers had indicated that they thought there may have been some repetition but again there was nothing done about it. It was just mere hearsay unfortunately. There were no records kept or whatever.

The Hon. COURTNEY HOUSSOS: You have not made an official complaint because you believe that it was a structural problem with the system?

Mr BONDAR: We did make a complaint to the Australian Electoral Commission.

The Hon. COURTNEY HOUSSOS: I am not asking you if you made a complaint about not having identification, I am asking if you made a complaint about people repeatedly voting that you were concerned about.

Mr BONDAR: Not repeatedly voting, no. On other matters we put in a formal complaint to the Australian Electoral Commission at voting booths, yes.

The Hon. COURTNEY HOUSSOS: But not regarding people repeatedly voting?

Mr BONDAR: No, not specifically.

The CHAIR: Concerns have been raised in a number of submissions and by a witness today about the size of the Legislative Council ballot paper being too large. Do you have any suggestions on what this

Committee could look at, if any, to be able to allow for the right of an individual to run for Parliament and also make sure that the appropriate measures are in place so we do not have table-size ballot papers?

Mr BONDAR: From our point of view, if you go back to the tablecloth dilemma that you had, again I am talking about our demographics, a lot of our people find it very difficult to navigate around that. I think some consideration should be given to that because one of the first things a lot of these people do say is "If it's too difficult I am just going to leave it or not vote or do something because my name has been marked off." You have to appreciate a lot of these people feel they have got to do the right thing, and it is a testing time for them to be able to fill in that tablecloth. If they cannot do it, they get stressed. I am not here to talk for the aged but what I want to say is if you cannot get them to vote, as they are meant to vote, then it is an issue that I think you need to look at.

The CHAIR: Do you support an increase in the number of people that you need to nominate an individual to be able to be on the ballot paper?

Mr BONDAR: I would be cautious about taking that approach, because we are a democracy and any member of the public is able to stand. We have to be careful not to disenfranchise anybody. But there is a lot to be said about how the ballot paper is set out. That is not an issue that I can give you an answer on today. I can tell you the feedback that I get from people. As a voter you must number from one to six boxes, but people want to know whether they can number from one to thirty or just one. Education is involved. The layout of the ballot paper is an important issue. I certainly would not like to disenfranchise anybody from standing.

The CHAIR: Thank you for that.

The Hon. Dr PETER PHELPS: The problem we face with the upper House ballot paper is that there are a large number of candidates who, through insanity or ego, are running for Parliament with absolutely no hope of ever being elected.

The CHAIR: Some of them do get elected.

The Hon. ROBERT BORSAK: It just happened in Canberra.

The Hon. Dr PETER PHELPS: The problem is not the size of the ballot paper; it is the number of people who are running. There are two ways to address that. You could increase the nomination fee, which I presume you would say would be undemocratic.

Mr BONDAR: Not necessarily.

The Hon. Dr PETER PHELPS: So you would prefer a situation where there is an increase in the nomination fee, as opposed to an increase in the number of signatures required for nomination.

Mr BONDAR: It would certainly sort out the genuine candidates and those that are party affiliated. If the fee were higher it would be a problem for us as well.

The Hon. Dr PETER PHELPS: Other people have said that they do not agree with increasing the amount required for a nomination fee; we should increase the number of people who are required to sign the nomination form. Your alternative would be to keep the nominations the same but increase the fee required.

Mr BONDAR: Not necessarily. It is one of the options.

The Hon. Dr PETER PHELPS: What is the other option, if you do not increase the size of the nomination fee?

Mr BONDAR: As suggested by the Chair, you could increase the number of nominations.

Mr SMITH: The number of people.

The Hon. BEN FRANKLIN: Can we go back to first premises on that issue. Do you think that there are too many people on the ballot paper and that it would be ideal to try to reduce those numbers because of the lack of seriousness of a number of the candidates?

Mr BONDAR: Philosophically speaking, yes.

The Hon. BEN FRANKLIN: Regarding the other issue that Dr Phelps raised, would you like to take that on notice and come back with an answer on which of the options you think it would be better to pursue?

Mr BONDAR: Absolutely. That would be great. I would like that.

The Hon. COURTNEY HOUSSOS: Earlier today a witness from another party suggested that individual returning officers should have discretion over their pre-poll locations. Given the implementation of the six-metre rule at pre-poll locations, it is usually a pretty friendly environment.

The Hon. Dr PETER PHELPS: Maybe in your area.

The Hon. COURTNEY HOUSSOS: It has been on occasion. That way, if there is inclement weather or people are out in the sun, slight adjustments can be made to the six-metre rule. Do you agree that the returning officer should have some discretion to allow that, provided that the voting is not impaired and people can continue to vote?

Mr SMITH: I suppose I would agree with that. The place where I helped out at the last election is used for both State and Federal pre-polling. The owner of the establishment does not allow any party members within the shopping centre. The centre has a low amount of traffic, but we are still not allowed in there. One of the entrances is terrible, weather wise, but there is no option to do anything else. The booth manager was amenable to us coming inside but he said that the centre manager would not allow it.

Mr BONDAR: If you have nine or 10 parties standing outside, that can pose a logistical problem too.

Mr SMITH: If the returning officer had some discretion then they would be able to take into account the fact that some of the sites are terrible in winter and terrible in summer.

The Hon. BEN FRANKLIN: Would you therefore support the recommendation that the Electoral Commission, if at all possible, not place pre-poll booths within shopping centres where parties and candidates cannot hand out how-to-vote cards easily?

Mr SMITH: Yes, I would.

Mr BONDAR: Yes.

The CHAIR: There being no further questions, thank you very much for your evidence today. If the Committee has further questions on notice it will provide them to you in writing in the next couple of weeks.

Mr SMITH: Thank you.

The CHAIR: Thank you very much for coming in.

(The witnesses withdrew)

CHRISTOPHER PETER STONE, State Director, Liberal Party of Australia, NSW Division, sworn and examined

The CHAIR: Good afternoon, Mr Stone. Thank you very much for appearing today. Do you have any questions in relation to the material that has been presented to you or in relation to the procedure?

Mr STONE: Not at all.

The CHAIR: Would you like to make an opening statement before we proceed to questions?

Mr STONE: Sure. Thank you for the opportunity to appear before the Committee today. For the benefit of the Committee I should indicate that I commenced as State Director of the New South Wales Liberal Party on 29 February 2016. My predecessor, Mr Tony Nutt, was the party State director and campaign director at the 2015 general election. As is well documented, Mr Nutt is now the Federal Director of the Liberal Party of Australia. Mr Nutt made a submission to this inquiry in September last year, on behalf of the NSW Division. I will make some comments on that basis. The Liberal Party believes that the 2015 election was conducted in a satisfactory manner. We acknowledge that the staff of the NSW Electoral Commission have many years of experience in the preparation of State elections and that the commission is a highly professional organisation. Today I wish to briefly highlight some of the comments, suggestions and observations made in our submission.

Comprehensive and accurate electoral rolls that honestly reflect the rise the right of bona fide electors to participate in an election are important to the integrity of the electoral system. It remains the position of the Liberal Party that we hold significant concerns over the automatic enrolment of voters and the maintenance of a separate state roll to the Commonwealth roll. It is important that, as much as possible, staff recruited on a short-term basis to meet the needs of the Electoral Commission meet proper criteria and have sufficient training, knowledge and capacity to be able to properly carry out their tasks. The Liberal Party requests that the Committee ask the commission to ensure that the guidelines for polling day arrangements that are provided to commission staff in polling centres are sufficiently clear so that they administer the rules consistently, wherever the polling place may be situated, and that, should a query occur, it is swiftly resolved. In making this point we note that the permanent staff of the commission are highly professional and that the then commissioner and his senior staff responded promptly when the party drew attention to particular issues. We acknowledge the work done by the commission to provide, in a timely manner, details on the location of polling places and improved arrangements for pre-poll in many centres. We also acknowledge its willingness to receive and adequately deal with queries from local campaigns.

In relation to iVote, it is important that the integrity and efficiency of the system be unimpeachable and that any expansion of the service reflect actual need, system robustness and efficient administration rather than institutional momentum to expand its coverage. Political parties are currently placed at a disadvantage in communicating with iVoters. Electors are entitled to receive information from all candidates so that they can make an informed judgement before casting their vote. Additional attention is needed to ensure that the complete iVote process permits this to occur. We believe it would be timely for the Committee to give consideration to whether or not the law should be amended so that parties and all other candidates seeking to provide guidance to electors on polling day are required to clearly brand their material so that a voter knows who is providing it and so that the language is accurate. Currently, an authorisation line at the bottom of material or posters is all that is required.

The Liberal Party acknowledges steps taken by the commission to improve accurate and timely counting and the provision of results to the public on election night and subsequently, but further work is required in this regard in our view. Finally I note that there is a deal of confusion because of the ad hoc nature of many of the amendments to the electoral Acts over the years and there is much need for improvement. This is equally the case with the administration of elections as it is with the receipt and disclosure of political donations and all the associated responsibilities and obligations placed on candidates and political parties. The Liberal Party believes that a review of the Act is timely, with the objective of ensuring that its provisions are best-practice and can be clearly understood by all participants in the democratic process. On that basis I am happy to take the Committee's questions.

The CHAIR: Thank you, Mr Stone. You raised the issue of automatic enrolment. Can you give us some examples of where it has been less than satisfactory and what that has meant for the party?

Mr STONE: The issue goes to whether the State should be automatically enrolling individuals or whether individuals should be taking that responsibility themselves. It is obviously the responsibility of the individual to amend their address details when they change their address. Equally it should be their responsibility to enrol. There is a philosophical issue for the party in that regard. There is obviously an issue around accuracy, particularly in the case of people being placed incorrectly on the electoral roll, given data that

may be collected from various places. In that sense there is a concern around the accuracy of the roll and there is the philosophical issue as to whether governments should be doing that in the first place.

The CHAIR: In relation to prepoll, would you support a reduction of the two weeks, an increase, or keeping it the same?

Mr STONE: We have just gone through a Federal election campaign for which the prepoll period was nearly three weeks. Obviously—

The CHAIR: It is a long time.

Ms MELINDA PAVEY: Yes. We are all still exhausted.

Mr STONE: Aren't we all? It is a long time. Given the nature of that recent campaign, it was a long campaign. Obviously with the election date falling around school holidays it was important to give people an opportunity to cast a vote if they were not available to do so on polling day. I think the current balance is right. There were exceptional circumstances in the Federal election but I think the current arrangements are probably appropriate.

The CHAIR: Thank you. One of the issues that has been highlighted to the Committee today is that of electronic voting. Obviously it has been mentioned in a variety of forums. Subject to checks and balances, would you support, over a period of time or over a number of elections, going to a fully-fledged electronic voting system, with voters still in attendance on Election Day? Would you support voting by electronic means?

Mr STONE: I think the question is really around the robustness and, indeed, the security of such a system. Call me a traditionalist but I think the idea of attending a polling booth on the fourth Saturday in March every four years is important. There would have to be appropriate checks and balances in place to be satisfied that there was security of the system and to ensure the integrity of the balloting process.

The CHAIR: Thank you, Mr Stone.

The Hon. ROBERT BORSAK: Mr Stone, in your submission you talk about the difference between the two electoral rolls for New South Wales—one is Commonwealth and the other is the State of New South Wales. Do you want to talk more about that? You talk about confusion in the mind of the voter—that is one thing. Why does that come about and how would you seek to fix that? Would you go back to one roll based on the Commonwealth model or one roll based on ours?

Mr STONE: On the issue of confusion, if there is automatic enrolment in place in New South Wales with various agencies providing input for the Electoral Commission to determine who ought to be on the roll, that creates one set of data. There are obviously provisions at a Federal level for automatic enrolment at the moment. There is the possibility of having different individuals on distinct rolls and the possibility of people attending polling booths who consider that they are on the roll when in fact they are not. A one-roll model is an appropriate one. In the past, as I understand it, the Commonwealth roll has been that roll, prior to the institution of a New South Wales roll. I cannot see a reason why that model would not be appropriate. There are appropriate checks and balances on both rolls but, given that we vote in national, State and local government elections, it would make sense that the national roll is the appropriate one to use.

The Hon. ROBERT BORSAK: You talk about the question of the integrity and reliability of data with the New South Wales roll. Are you aware of what audit procedures are carried out by the commission to guarantee the integrity of the roll, especially given all these automatic arrangements?

Mr STONE: Sure. I have been in this job a short period of time. I must say I am not familiar with those audit processes at the moment. As I said, the submission to this Committee was prepared by my predecessor. I am not familiar with those audit processes.

The Hon. ROBERT BORSAK: Looking at iVote for a moment, it is mentioned in your submission and I take from what you are saying that iVote or computerised voting rather than just electronic voting should not expand just for expansion's sake, that it should probably only relate to when it is really necessary, expedient or perhaps part of a cost-cutting arrangement—do you agree with that proposition?

Mr STONE: It is part of the mix of methods through which people may be able to cast a ballot in the event that they are physically unable to attend a polling booth. Obviously there are a range of things such as postal votes and the like. I think iVote is important in that mix, particularly for people who are visually impaired. As further mentioned in the submission, there are issues for candidates and political parties to be able to communicate with people who cast iVotes and obviously that is an area that we are concerned about. It is an important part of the mix of methods that people have available to them to cast a vote in the event that they cannot attend a polling booth on polling day. That is a separate issue to the question the Chair was asking earlier

about electronic voting on the day. They are two very different issues. Obviously the iVote system has been used at a number of elections now. The Electoral Commission at each election has refined the processes, but there can be more done to improve that process.

The Hon. ROBERT BORSAK: I think where the Chair was going was if you went to the nth degree and said, "There will be no more bits of paper anymore, just voting electronically." Is that what you were saying?

The CHAIR: That was one of the issues that we have heard today.

The Hon. ROBERT BORSAK: Do you agree with that proposition?

Mr STONE: Again there would have to be a robustness around that system to give electors a sense of surety that the process was transparent and that there was an integrity to the data—that it could not be compromised—in order for such a system to be implemented.

The Hon. ROBERT BORSAK: One of our earlier witnesses, Mr Green, said he thought current arrangements suitably augmented by iVote were sufficient and that one of the important issues was to ensure that parties themselves had confidence in the system, especially when it came to scrutineering. In terms of polling day, in the Liberal Party submission Mr Nutt proposes that all party literature, posters and other display materials be branded clearly—you obviously agree with that proposition.

Mr STONE: Yes. I think it is important that electors know the source of posters and the like on polling day. There is obviously a registration process for electoral material that is distributed on the day. For posters that would be an important way of giving voters a sense of who was conveying the message to them as they are entering a polling booth.

The Hon. ROBERT BORSAK: And what about on voting material itself? For the first time in Australia we have seen the Federal Senate ticket include logos above the various groups. Would you support a proposition that did that in New South Wales, especially given the size of our electoral ticket in the upper House?

Mr STONE: Yes, I would.

The Hon. ROBERT BORSAK: Would you like to see them larger than they were at the Federal level?

Mr STONE: I personally was able to discern the logos of each of the parties that were represented above the line on the Senate ballot paper.

The Hon. ROBERT BORSAK: You would agree with the proposition that it might be useful?

Mr STONE: I think it would be, yes.

The Hon. ROBERT BORSAK: And in the lower House seats?

Mr STONE: I see no problem with doing it for the lower House seats either.

The Hon. Dr PETER PHELPS: On the registration of material to be handed out on polling day a number of witnesses have suggested that the material should be online and freely available for all to see. Presumably the Liberal Party—given that it places its own how to votes on its website anyway—would have no problem with the general promulgation of registered material by the Electoral Commission prior to Election Day?

Mr STONE: No, I would not have a problem with that at all. Indeed, I think the process of registration eight days out from an election obviously allows a transparent approach to viewing material to be distributed on polling day. Arguably it should be available earlier so that everyone is able to view that material before polling day as well. But I certainly have no problem with the idea of it being available online.

The Hon. Dr PETER PHELPS: Concerns were also raised about the limited time frame in a State election campaign between the draw of candidates and the commencement of pre-poll. Would you like that period of time extended? Are you aware of any problems that have been occasioned for the Liberal Party because of the relatively short time frame, or is this something which has really been of concern to the smaller parties?

Mr STONE: That period between the close of nominations, the ballot draw and the opening of the pre-poll is a logistical challenge for any political party that contests an election. If they are fielding a number of candidates and they are preparing large amounts of material that needs to be printed and distributed it is a logistical challenge. If there were an extension to that period I would certainly not complain about it.

The Hon. Dr PETER PHELPS: For example, Antony Green suggested that the writs be issued on the day that Parliament is dissolved, effectively giving another three days at the front of the campaign. Is that something you would be in favour of?

Mr STONE: I certainly would not be opposed to it. It is something I would probably want to look at a little closely, but in principle it would seem like a good idea.

The Hon. BEN FRANKLIN: The Nationals have suggested, for example, that increasing that time frame or bringing that time frame back would allow postal votes to be sent out earlier, so it would stop the problem we found in a number of quite isolated areas where postal votes were not being received or not getting back in time. Do you think increasing that time frame would be of assistance?

Mr STONE: I think it would. Obviously in rural and regional areas the delivery times are greater anyway, but given the changed arrangements for Australia Post delivery times for a standard piece of mail—in those circumstances alone it would be a good idea to extend that time frame to give people as much of an opportunity to receive and return ballot papers.

The Hon. COURTNEY HOUSSOS: I wanted to expand on the issue around iVote and communicating with people who undertake an iVote. That is something that all political parties have an issue with. Do you have any suggestions for how that could be rectified?

Mr STONE: One particular idea may be the registration as a general iVoter. Just as people can register as a general postal voter, a general iVoter, someone who would be using the service at every election, would provide an opportunity to identify those people and therefore be able to communicate with them. Naturally for those people who are registering from election to election that becomes more difficult, but that is one possible solution at least for that cohort of electors who will be using the service at every election.

The Hon. COURTNEY HOUSSOS: I wanted to come back to the question of automatic enrolment. You have talked about the integrity of the roll. Obviously people who are automatically enrolled have two or three opportunities to say that it is incorrect and that they need to correct it. There are still checks and balances on the automatic enrolment process.

Mr STONE: Sure, but there will still be opportunities, no doubt, for people to fall through the cracks. I would still argue that there is still the propensity for the roll to be incorrect or for people to be incorrectly put on the roll notwithstanding some of those checks and balances.

The Hon. COURTNEY HOUSSOS: The final paragraph of your submission says that the Liberal Party believes that local government should have an appropriate specific framework, which seems to suggest that it should be separate to the current electoral Act. Is that your suggestion?

Mr STONE: It is just a recognition that the processes of voting at a State general election and at local government level are quite different. Obviously political parties and candidates are going through this process at the moment with local government elections coming up. Various councils are divided into wards; there are direct mayoral elections in some and not in others. It would make sense in our view to have a separate framework that administers local government elections to that which is involved with State government elections.

Part of the problem with the current legislation is that over time the ad hoc nature of the amendments has made the legislation complex. It is very difficult for seasoned professionals to sometimes interpret it, let alone for a candidate who is contesting for the first time. In that context I think there is a need to review the way in which both State and local government elections are dealt with in the legislation so that they are clear and provide clarity for candidates and political parties alike.

The Hon. PETER PRIMROSE: One of the principles that has been espoused here in previous years is the concern about having different electoral systems at various levels of government. How do you feel about things such as universal postal voting in council elections, as in there is no attendance voting?

Mr STONE: I would probably refer back to my earlier comment that, being somewhat of a traditionalist, I do not think that attending a polling place in your locality or district once every four years is too much of an imposition. Indeed, you miss out on the sausage sizzle and the cake stall as well by going down that route. I think it is just part of the democratic process that people would expect to be able to attend a polling place and cast a vote. I think obviously those other processes for casting a vote are important in the mix given people's circumstances, but I frankly cannot see why people cannot attend a polling place every four years.

The Hon. Dr PETER PHELPS: Earlier Mr Green indicated that there is a potential problem with the large number of candidates on the ballot paper, so much so that if there are any more candidates running for the

State upper House we will move into the territory of returning to the old tablecloth. Two proposals have been mentioned. One is to increase the nomination fee for people wanting to run and the other is to increase the requirement of nominees required to sign a nomination form for a candidate. Do you have any particular preference one way or the other in that regard?

Mr STONE: I must say I have not thought through that particular issue myself.

The CHAIR: We are happy for you to take it on notice.

Mr STONE: I am happy to take that one on notice. Frankly, I would not necessarily have a view at this stage one way or the other on that. Clearly for electors to have to go through the process of determining who they are going to cast their vote for when they are receiving a quite large ballot paper is difficult for them. I think it is something that I would want to consider in a little more detail.

Mr ADAM CROUCH: A couple of the groups giving evidence this morning made comment with regard to potentially illegal or misleading signage on election day at the last State election. One suggestion is that the returning officer be provided with all of the approved signage and that returning officer, prior to the opening of the polling booth, inspects the material and either approves it all or has the electoral staff remove it if it does not meet such a requirement. Would you agree with that sort of principle?

Mr STONE: Currently candidates and political parties have to register material that they distribute eight days before polling day, so the notion of having to register posters on polling day would seem like a natural extension of that requirement. I would not see any particular issue with that.

The Hon. Dr PETER PHELPS: Posters on polling day are not just a standard corflute; they also have the campaign message. Is there a problem, from your point of view—and it might be the case that there is no problem from your point of view—that the actual election-day message, which no-one knows about till election day, is then advertised eight days out from an election?

Mr STONE: Naturally, for a political party that would be an issue because obviously we are conveying messages to voters every day during an election period, but the most important message you are conveying is on the day they are casting their vote. That being said, people are pre-polling two weeks in advance when they are casting their votes using postal votes and other means. It is not—

The Hon. Dr PETER PHELPS: It is not a State secret.

Mr STONE: It is not a State secret, and if there is a variation in the message on the day it would be a slight one.

Mr ADAM CROUCH: Following up from that, one group giving evidence lodged a complaint with the Electoral Commission and to date has not received a formal response from the Electoral Commission, as I understand. Did the Liberal Party lodge any formal complaints with the Electoral Commission on or post the State Election Day? If so, has the party received a response?

Mr STONE: In relation to posters?

Mr ADAM CROUCH: In regards to illegal signage.

Ms MELINDA PAVEY: And advertising.

Mr ADAM CROUCH: Or third-party advertising.

Mr STONE: To the best of my knowledge the Electoral Commission responded to all of the particular inquiries or queries that we put in in relation to activities before polling day and on polling day.

Mr MARK TAYLOR: I suppose that is why in your submission you suggest that the logo appears on posters. Obviously the wording of posters is always going to be in dispute on the day.

Mr STONE: Yes.

Mr MARK TAYLOR: Are you in favour of posters having party or group logos, regardless of their message?

Mr STONE: It just makes it clearer to electors who is conveying the message.

Mr MARK TAYLOR: Without going into detail of any complaints, has the party made complaints to the Electoral Commission? If so, in your experience how are those complaints being handled?

Mr STONE: My understanding from the 2015 election was that the responses were efficient and they were provided in a timely manner. I do not have any evidence or suggestion that they did otherwise. By all accounts they were quite efficient in dealing with the queries that we raised.

The CHAIR: One of the concerns that comes up in every election is voter fraud or potential voter fraud. Would you support a system of mandatory voter identification [ID]?

Mr STONE: Yes, I would.

The CHAIR: How do you see that working potentially?

Mr STONE: In this day and age people generally have a form of government-issued ID—be it a driver's licence, a proof of age card—that could be produced when they attend a polling place. Equally, if it was a postal vote, you are providing a statutory declaration in effect that you are who you claim to be. But if you are attending a polling booth, in my view, there should be no reason why you cannot produce certain pieces of identification to have your name marked off the roll and be issued a ballot paper.

The CHAIR: In relation to handing out on an election day, would you support the Australian Capital Territory [ACT] model where parties cannot be within a kilometre of a polling booth on Election Day?

Mr STONE: No, I would not.

The Hon. BEN FRANKLIN: Following up on the question about complaints, I will ask you a specific question that you will almost certainly have to take on notice because you were not there. Did the Liberal Party make any complaints about signage on polling day which breached the Act in terms of the size limits or any official complaints about third-party campaigns? If there were complaints about either of those issues, did you receive a response from the Electoral Commission? Were you advised what sanctions would be imposed on the parties, organisations or individuals that breached the Act?

Mr STONE: I would need to take that on notice to check.

The Hon. PETER PRIMROSE: Please also take this question about voter ID on notice. I was wondering—

The CHAIR: I thought I would get away with that, Mr Primrose.

The Hon. PETER PRIMROSE: I have been taking copious notes. Please tell us what evidence the Liberal Party has as to the extent of voter fraud and in relation to why voter ID of some nature might overcome that. I am not asking for a response now, but please provide us with some evidence.

Mr STONE: Sure.

The Hon. COURTNEY HOUSSOS: Further to the voter ID question, you said that most people have some form of government ID. What kinds of exemptions would you support?

Mr STONE: I would need to take that on notice as well to consider that more carefully. But in a general sense, as I said, I would appreciate that most people have a form of government-issued ID that they would be able to produce. I am happy to consider that and take it on notice, if that is okay.

The Hon. COURTNEY HOUSSOS: Yes, absolutely, because in your own words there would be some people who would not have ID so we need to be mindful of what we could give those people.

Mr STONE: Sure, I am happy to take that on notice.

The CHAIR: Thank you very much, Mr Stone, for appearing before the Committee today. The Committee may have some supplementary questions to ask you, the responses to which may be required within two weeks of when they are sent to you. Would you be happy to accept additional questions in writing?

Mr STONE: Sure.

(The witness withdrew)

(Short adjournment)

MARK MOREY, Unions NSW, affirmed and examined

KATE MINTER, Unions NSW, affirmed and examined

The CHAIR: Do you have any questions relating to the material sent to you or any procedural questions?

Mr MOREY: No.

Ms MINTER: No.

The CHAIR: Do you wish to make an opening statement?

Mr MOREY: Obviously, Unions NSW was a third party campaigner in the last election. We see elections as important periods when political parties can be held most accountable for their policies and actions. Third party campaigners play an important role in the democratic process. We participated both electronically and on the ground, talking to people directly and so on. One of the other two points that was most important to us relates to the definition of "electoral communication". That was complicated and it was not clear. That affects the activities you undertake and the certainty with which you undertake them so that you do not break the law. The other part that we found difficult was auditing and compliance. We spent more than \$70,000 complying with the law, and that included getting legal advice about the definition of "electoral communication". When accounting for our expenditure, there is a lot of double handling and paperwork. It is a long and complicated process. It would be good if that were simpler and if we had a clearer definition of "electoral communication".

The Hon. COURTNEY HOUSSOS: I pick up on the point you made about how difficult it can be for a third party campaigner to register and to fulfil the requirements under the Act. Antony Green talked this morning about the need to ensure that the barriers to entry for candidates are not too high so that they can still participate in the process. Obviously you do not speak for all third party campaigners, but you do speak as a peak body. Your submission refers to the untangling of provisions relating to third party campaigners and political parties. Obviously the requirements of political parties are very high, and that is appropriate. However, perhaps they should not be quite so stringent for third parties. Can you explain that?

Mr MOREY: Smaller third party organisations might not be well funded. The costs that we carried so that we could participate would be prohibitive for many community-based groups or groups organised in local seats. It would be difficult for them to become third party campaigners and to participate. I suggest that some of them would unknowingly break the electoral laws because they do not have access to legal advice or cannot pay for it or accounting advice. The current structure is prohibitive for third party campaigners to follow the regulations and to be accountable. It is also difficult for them to be able to participate in a campaign and the democratic process knowing the full implications and the laws. They restrict many things that can be done.

The Hon. COURTNEY HOUSSOS: On that point, all third party campaigners are treated the same. You make the point in your submission that as a peak body you are working in concert with other organisations that may also be third party campaigners. That presents a host of its own problems. Can you explain that?

Mr MOREY: Aggregating funds is important. Because ours is a peak body, we have numerous members—unions—who contribute to campaigns. Certainly, the threshold issue of how much you can spend and whether or not you aggregate money is important. The level at which peak bodies can spend should be higher than it is now. Then you work with different groups on different issues. From memory, we had a number of groups that approached us for advice that were not political organisations or parties. They were asking us how to do this, what is political communication, how does it work and so on. Unless they are cognisant of the issues, the Act and the requirements are a very murky area for those participants.

The Hon. COURTNEY HOUSSOS: Did you feel that the NSW Electoral Commission provided you with enough advice?

Mr MOREY: We wrote to the commission about the definition of "electoral communication", but it could not give us a definitive and clear answer about what it was and its implications. We had to get our own legal advice. We modelled our campaign and the things we did based on the advice we obtained in the hope that it and our interpretation were correct.

The Hon. COURTNEY HOUSSOS: Not many third party campaigners can do that.

Mr MOREY: No. That is where the cost becomes prohibitive in the sense of trying to comply with the law when it is not clear.

The Hon. COURTNEY HOUSSOS: Your submission deals with the No Land Tax Party and some of the promises it made. I am sure many people working on the booths experienced that first hand. Obviously you are not only a third party campaigner; you are also the peak body representing workers in New South Wales.

Mr MOREY: One of our issues was the industrial implication of making a commitment to pay workers, even for a day, and then not paying them. That is obviously very problematic. There seems to be no provision in the Act that penalises a person beyond the normal penalties for doing that sort of thing. If parties or people engage in that sort of practice, they should be unable to set up another party or participate in that way. The other thing that comes with paying individuals is that there should be some disclosure by parties or third

party campaigners about who they are paying on polling booths, the amounts they paying and where. That should be part of the return; they should disclose that as well.

Ms MINTER: We were concerned about the non-payment of workers by the No Land Tax Party. I understand that the Fair Work Ombudsman is pursuing that now. We were also concerned about the deceptive way in which the work was advertised. Many people thought they were working for NSW Electoral Commission on the day because of the way the job had been advertised. They did not realise that the No Land Tax Party was advertising the job.

The Hon. COURTNEY HOUSSOS: Obviously the Fair Work Ombudsman is pursuing that now. What would the penalty be in a non-election period if someone did that kind of false advertising and did not pay their workers? I am happy for you to take that question on notice.

Mr MOREY: We think they should be prosecuted. The electoral process is an important process and it should not be treated as a joke. The whole No Land Tax Party stuff is a complete farce. It should not be allowed to go on and there should be some rigour during the election process to intervene on those sorts of circuses because it brings everyone else into disrepute as well. It is probably harder during the election period to actually intervene on that stuff, but where people are actually misrepresenting who and what they are there should be an ability to intervene at that point and suspend what they are doing.

The Hon. Dr PETER PHELPS: Mr Morey, I just want to clarify this: the expenditure that you faced, did it relate to the initial registration or the subsequent administrative requirements which flowed from the registration in the first place as a third party campaigner?

Mr MOREY: I think the registration process is difficult and then the subsequent processes of complying with the Electoral Act are also difficult and expensive. I think the fact that peak groups such as a union, who has obviously participated in a lot of elections, has to go and seek advice to understand the Act and seek advice to comply with the Act, simply illustrates how difficult that makes it then for other people who just want to participate in it. I think the cost is a burden, yes.

The Hon. Dr PETER PHELPS: I will come back to that second bit, but the first bit in relation to registration, what specifically about the registration process is problematic for you guys?

Ms MINTER: In terms of our submission, the processes we went through in the registration processes were performed by another colleague who was responsible for that. So it might be best for us to take that on notice and get some further details from him around the breakdown because it provided an aggregate figure of \$70,000 for consultancy. Perhaps we can find some further detail around the process that was most prohibitive.

The Hon. Dr PETER PHELPS: Again, I am happy for you to take this on notice: Did your affiliated unions who were also registered as third parties—not all affiliated unions but some of them were registered as third parties—have the same problems or was it because of the fact that you are a peak body that the problems arose in the registration?

Mr MOREY: I will take it on notice as well but, from memory, we assisted a number of unions in the process of becoming registered themselves and as a peak body they would ring us and ask, "How did you get through this? How did you do that? What is the answer here? What is the answer there?" So we virtually played a de facto role in advising people rather than the Electoral Commission, because we could not necessarily get a straight answer from them around different things, about how you enrol or become a third party campaigner and then in doing that what does it mean to stay within the law as a third party campaigner.

Ms MINTER: I guess we are concerned that it will become even further complicated with recommendations to restrict the ability of third party campaigners working together. As a peak body there were a lot of common issues that we had with unions as well—workers compensation, the privatisation of electricity affected more than just the Electrical Trades Union. So there are a lot of issues that we campaign commonly and by restricting the ability of third party campaigners to do that together we think would further complicate it both for us as a peak body but also for our affiliated unions in terms of compliance.

The Hon. Dr PETER PHELPS: We heard evidence earlier today that there were organisations—specifically, the Wilderness Society—who chose to campaign without becoming registered as third parties. Do you believe that that was inappropriate or are you somewhat forgiving of them on the basis that the registration process was so difficult that they had to break the law?

Mr MOREY: I do not know what was in their minds but it adds another layer of bureaucracy to actually participating in the process and I think because we are the size that we are and have the resources we have, it is easier then to enrol, get everything in place and do those sorts of things. I suppose at the end of the day if there are laws in place, and I can only speak on behalf of our organisation, we are going to seek to comply

with those laws because not to is far more detrimental for us than spending the money and complying. You have to ask them about why they did what they did, I guess.

The Hon. Dr PETER PHELPS: Just getting on to the second part of your concerns in relation to the administrative difficulties which flow from registration and specifically the requirement of finding out what is electoral expenditure, you could not really expect the Electoral Commission to give that specific advice, could you? After all, it is an Act of Parliament and you cannot get judicial authority from an executive body; you literally need to have legal advice, do you not?

Mr MOREY: I think the legislation in itself, particularly that part, is difficult. There is no simple way of reading it. There is no simple definition of it. Sure, you should get the Act and read it, but there is no definition of electoral communication in the Act.

The Hon. Dr PETER PHELPS: No, that is right, because it is meant to be read expansively.

Mr MOREY: Well, you come and be a witness for us if we get dragged in for breaking electoral communication laws.

Ms MINTER: One of the particular concerns as well for third party campaigners with that definition—

The Hon. Dr PETER PHELPS: But it is a problem for us too. It is a problem for parties as well. But the problem is that it is the same argument about defining anything to exclusion in the political sphere. What goes in our newsletters is often a matter of judgement based on community expectations. If this matter became the subject of a legal action would I be able to defend it as a legitimate political communication? Is that not a better way of doing things than saying, "We are going to prescribe in detail what is and what is not legitimate political communication"?

Mr MOREY: I do not think you should be prescribing it at all. If you are going to put something in there that says electoral communication, the problem for us is that many of the things that we do in an election period is political but may not necessarily be related to the election. So it becomes complicated. If you hand something out that says "Vote for" or "Don't vote for", that is clear. But if we organise a rally against something during an election period, is that electoral communication because we take up an issue we disagree with the government of the day on and we are out on the streets doing that and we have funded marshals and we have paid for amplification, PAs and all that sort of stuff—

The Hon. Dr PETER PHELPS: Have you not answered your own question? "We disagree with the government of the day on", so, in other words, it is a political communication.

Mr MOREY: It is a political communication and it is a burden to our right to political communication by saying you have got to have it in the Act but no-one can define what it actually is. So if you cannot define what it is, why have you got it there in the first place?

Ms MINTER: Additionally, for unions our everyday large employer in New South Wales is the government of the day. So our actions and everyday actions of unions representing them, and perhaps taking issues up to the government of the day as their employer, is that then considered an electoral and a political act even though that would then be covered by the everyday work of that union and what we think is a community expectation of union members for that union to be representing the interests of their members?

The Hon. Dr PETER PHELPS: And what did your legal advice say on that.

Ms MINTER: I do not say we have legal advice—not that I am aware of. They are just the concerns around the clarity for how it interacts with acknowledging that for the majority of third campaigners their core business is not political; it is not to engage in politics every day to the extent that political parties would. So how does that affect our ability to undertake our everyday work in the interests of union members and for the members of other organisations? We appreciate that the Act cannot prescribe that but we also would look for consideration that our everyday activities need to be continued and should not be inhibited by electoral Acts.

The Hon. Dr PETER PHELPS: But presumably your everyday activities are not directed towards a vote against the government or a vote for or against a particular government policy. For example, if one of your unions takes up the role of an underpayment, that is demonstrably not a political communication.

Mr MOREY: No but campaigning against the Government's wages policy—

The Hon. Dr PETER PHELPS: You have given it away then. Campaigning against the Government's wages policy is inherently a political communication.

Mr MOREY: Which we do outside and inside the defined electoral period in which the Act applies. In October before an election do we have to stop all those activities—

The Hon. Dr PETER PHELPS: No you just have to fit them within the \$1 million cap.

Mr MOREY: But that is a restriction and inhibits our right to advocate a position we have in a democracy, which is what we do and is fine for 3½ years to do and suddenly becomes inhibited because of a \$1 million cap that starts on 1 October.

The Hon. Dr PETER PHELPS: That is an argument saying that there should be no caps and no prohibition on third party campaigners. And that may well be your position—I do not want to put words into your mouth. Is your position there should be no caps on third party campaigners and no restrictions on third party campaigners entering the field?

Ms MINTER: Maybe we will take that on notice. I think that the caps that are placed on third party campaigners should take into consideration the everyday activities and the role that that organisation plays outside an electoral period. I want to go back and note that we do not agree that the word "campaign" should be conflated and treated the same as an electoral campaign. Unions run campaigns against employers and a range of campaigns that are not targeted around electoral outcomes. I think unions campaigning against the 2.5 wages policy does not necessarily lead to us trying to influence the electoral vote and therefore as a campaign I would argue it is not electorally based. It is about campaigning for the best interests of workers, whether that means a change of government or placing pressure on the Government to change its position on something, I do not think that you can conflate those two words together—campaign and electoral campaign.

The Hon. Dr PETER PHELPS: Unions in Great Britain and New Zealand recognise third party caps. Presumably there is nothing particular about Unions NSW which would mean that the unions have an opposition to third party caps, is there?

Ms MINTER: What we are saying is that you need to, in the third party caps, acknowledge the everyday work that is undertaken. We are not arguing against the caps but we are arguing vehemently against a halving of the cap to \$500,000 which has been a recommendation that was supported by this particular Committee which would seriously inhibit our ability to do our every day jobs during an election period, and the ability for unions to communicate with their members about electoral issues that are important to them in the lead-up to an election.

The Hon. COURTNEY HOUSSOS: An industrial campaign is not always a political campaign?

Ms MINTER: No, absolutely.

The Hon. Dr PETER PHELPS: Is the \$1 million cap too low to effectively campaign?

Mr MOREY: I think it is difficult. It is restrictive, yes, particularly if you are looking at a media market such as Sydney and to actually participate in paying for advertising and getting your message out, \$1 million does not buy you a lot in a Sydney media market.

The Hon. Dr PETER PHELPS: How many affiliated unions are there for Unions NSW, roughly 21, 22?

Mr MOREY: There are about 63, including Trades and Labor councils around the State.

Mr ADAM CROUCH: That means effectively around \$63 million could be spent, with \$1 million per organisation.

Mr MOREY: The difficulty there is that some of those unions only have 2,000 or 3,000 members so they would not be able to actually raise that sort of money. And that is the importance of being able to aggregate money as a peak body so that you get enough money to actually run a campaign by our smaller groups or our larger unions coming together and putting money into a single pot to actually campaign.

The Hon. Dr PETER PHELPS: If you wanted to do that and have effectively a much larger campaign expenditure then why would not Unions NSW just form a political party.

Mr MOREY: We did.

The Hon. Dr PETER PHELPS: In 1890.

Mr MOREY: In 1891.

The Hon. Dr PETER PHELPS: That is right you did. In other words the Labor Party has got its expenditure cap and it can expend up to its limit and Unions NSW and all its constituent unions can expend up to their limit as well.

Mr ADAM CROUCH: Potentially \$63 million.

The Hon. Dr PETER PHELPS: Potentially \$63 million above and beyond the \$20 million which the Labor Party can spend.

Mr MOREY: But we cannot compete with the mining companies, or the banks or anyone else. It is actually not going to get \$63 million, that is just not going to happen.

Ms MELINDA PAVEY: They are not that generous, don't you worry, like your union.

Mr MOREY: Yes, we drag it out of them.

The Hon. ROBERT BORSAK: Mark, they are subjected to the same caps as you during the electoral period.

Mr MOREY: Yes.

The Hon. ROBERT BORSAK: Your submission is the only one that has raised the attempted electoral scam called the No Land Tax Party. It is interesting that you have come at it from the point of view of the scam being structured around the bogus promises of payments. It does open up, to my way of thinking, the whole process of registration of some of these parties and how they are achieved. More importantly, the question of having been demonstrably proved to be a con as far as payment of payments are concerned and how it can still remain registered under the electoral Act. Do you want to elucidate a bit more on that?

Ms MINTER: We have to be mindful that it is still being investigated and pursued by the Fair Work Ombudsman.

The Hon. ROBERT BORSAK: That is Fair Work, that has got nothing to do with the electoral Act. We are talking about the electoral Act.

Ms MINTER: Absolutely. In terms of the nature of the underpayments and the extent of them, I will probably reserve judgement on how that played out until those cases have been completed.

The Hon. ROBERT BORSAK: How would you like it to play out? I think that is the important thing, otherwise you should not raise it.

Mr MOREY: No.

Ms MINTER: We have raised it but I am just acknowledging that it is still being played out in terms of the evidence in proving what has actually occurred there. That is all I point out.

Mr MOREY: There should be some penalties for those who established those parties fraudulently. Those parties such as the No Land Tax Party should not be able to continue to be registered. And there should be somebody looking at the people who established that party and whether they should be allowed to in future register a party under which they campaign.

The Hon. ROBERT BORSAK: Or they should remain as officers of the No Land Tax Party?

Mr MOREY: Yes.

The Hon. ROBERT BORSAK: I think the commissioner's response to you of those complaints is the correct response. He does not have any jurisdiction in that area and even if they were found to be guilty under Fair Work it still would not influence what is going on in this Act.

Mr MOREY: No, there are no penalties there for it. The size of this, and what was done, I do not think we have seen anything like that previously.

The Hon. ROBERT BORSAK: Exactly, that is my point.

The Hon. Dr PETER PHELPS: And it was not a mistake.

Mr MOREY: No.

The Hon. Dr PETER PHELPS: It was done with deliberate intent.

The Hon. ROBERT BORSAK: This was a deliberate attempt to set up a scam party, lie to people that they would get paid, talk about electoral contributions that would be made if they got elected, knowing full well in New South Wales that if you spent nothing you get nothing even if you do get elected.

Mr MOREY: That is right. And we think there should be ramifications for people who behave like that.

The Hon. ROBERT BORSAK: I agree with you but funnily enough you are the only people who have raised it in the submissions I have read so far anyway.

Mr MOREY: I think the industrial part of it interests us. But also as a third party campaigner you want to know that you are not lumped in with all these sorts of frauds. It is an important process for participating in the democratic process and people should be held to account and it should be open, honest and straightforward.

The Hon. ROBERT BORSAK: This Committee and the Parliament spent a lot of time in the last two or three electoral cycles putting caps on restricting donations, controlling all of that side of things—who can say what, when, how much can be spent—but little or no time has been put into the law around who should be good and proper persons to be officers of parties. There has been some talk recently about that but also about the continuing registration of parties. I find it absolutely incongruous that this party can remain registered after a scam like that.

Mr MOREY: Absolutely and our position is under the Act there should be an ability for a fit and proper person and there should be an ability for deregistered parties such as these that behave obviously fraudulently and I suspect will be proven to have acted fraudulently and they should be smashed for it.

Ms MELINDA PAVEY: Thanks for putting it in your submission.

The Hon. PETER PRIMROSE: I think the Hon. Dr Peter Phelps actually covered most of my questions. I was simply going to reinforce again that even though it has not arisen extensively today but in other inquiries we have repeatedly heard evidence when people of various positions had a question they contacted the Electoral Commission—before that the State Electoral Office—and the advice they invariably received was, "You need to go and seek your own legal advice."

Mr MOREY: Yes.

The Hon. PETER PRIMROSE: For what amounts to a regulator, it is a very difficult position when someone is legitimately seeking advice, is unable to obtain it and needs to go to that extent. Is the issue the lack of established and published precedents that may to help guide people? Or is it, as you indicate in paragraph 26, lack of clarity in the legislation? You said previously that the definitions relating to communications expenditure were an issue. What could assist not only your organisation but other parties seeking to obtain that information so that they are not in breach of the legislation?

Mr MOREY: The legislation probably needs a good rewrite, as a starting point. From what we can see, the Act has been put together piecemeal. A rewrite of the act is timely. Part of the problem is that because it is so piecemeal it is hard to work out. Nothing fits together seamlessly. As a third-party campaigner you have a right to ask the presiding body what constitutes electoral expenditure or electoral communication. You should be able to get a straight answer out of them. You should at least be able to give an example of what you are intending to do so that they can say whether it is electoral communication.

The Hon. Dr PETER PHELPS: You cannot do that, Mr Morey. An executive agency cannot exercise quasi-judicial authority. The courts can come in and say that they are the sole determinants of the interpretation of legislation. An executive body may give guidance on what it thinks is right or on precedents that have been checked by black letter law. It may say what it thinks is political communication, but you cannot legally give the authority to an executive agency to say whether something is absolutely within the law or not.

The Hon. PETER PRIMROSE: I do not think that is what Mr Morey was implying.

The Hon. Dr PETER PHELPS: I think that is what he is implying.

The Hon. PETER PRIMROSE: We differ. Maybe the witness can answer.

Mr MOREY: What is my defence in court? Do say, "I rang them up and they could not tell me so we had a guess. I am not guilty, Your Honour"?

The Hon. Dr PETER PHELPS: Yes, that is exactly our defence when it comes to what we put in our newsletters and also for our entitlements. Our entitlements are created by an executive agency that we cannot get relevant decisions for. The only way that we can find out whether we are inside or outside of entitlements is if we end up at the Independent Commission Against Corruption [ICAC] or in the courts of New South Wales.

Mr MOREY: Why should I have to pay? If I ask for advice and I cannot get it, I then go and pay for it and then I act. If I am wrong, I then have to go to court and pay again for solicitors to defend me for something that I have tried to comply with. I keep getting slugged.

The Hon. Dr PETER PHELPS: I do not disagree with you.

Mr MOREY: Then there should be some sort of funding.

The Hon. Dr PETER PHELPS: You cannot create an agency that offers quasi-judicial advice.

Mr MOREY: Maybe there should be a pot of funding for third-party campaigners to dip into to get legal advice in order to comply with the legislation. If you are a small community group and you want to set up and participate as a third-party campaigner, you should be able to put in for a grant to seek your own legal advice. Do you want to set that up?

The Hon. PETER PRIMROSE: Leaving aside the issue of statutory interpretation and common law et cetera, can I clarify that the fundamental point that you have raised is the fact that you believe the legislation and regulations as they exist are haphazard, overly complex and sometimes contradictory and accordingly need a good rewrite?

Mr MOREY: Yes.

The Hon. PETER PRIMROSE: That may result in—

Mr MOREY: It may be the way in which you can address this problem.

The Hon. PETER PRIMROSE: Yes.

Mr MOREY: I understand your point. I get it, but it is very frustrating. As you know from your entitlements, you ring up to try to do the right thing and no-one can tell you anything. Then you act and you end up breaching the Electoral Act.

The Hon. Dr PETER PHELPS: It is even worse than that. They will tell you that, while this was accepted in the past, there is no legal surety that what happened in the past is legal.

Mr MOREY: Yes, exactly.

The Hon. Dr PETER PHELPS: Until you end up in front of ICAC or in court.

Mr ADAM CROUCH: I am seeking some clarification. Earlier we were discussing the No Land Tax Party and the need for a code of behaviour for candidates and parties. Is that correct?

Mr MOREY: Yes.

Mr ADAM CROUCH: You agree with that?

Mr MOREY: Yes.

Mr ADAM CROUCH: Do you also then agree that third-party participants should be bound by the same code of behaviour, as they are in many cases getting similar amounts of money or more money that is being spent by candidates and parties. Should a third-party be bound by the same code of practice?

Mr MOREY: I will have to have a think about that one.

Mr ADAM CROUCH: I would have thought it was pretty simple. You are asking a group of people to abide by a certain set of rules. Should those same rules not apply to anybody who is campaigning?

Mr MOREY: In the campaigning period, yes.

Mr ADAM CROUCH: So third-party groups should be bound by the same code of behaviour and sign off on that same code of behaviour?

Mr MOREY: For behaviour, yes. The things that you say, your actions and the way you do things should be compliant with the law.

Mr ADAM CROUCH: For anybody affiliated with such third-party groups, as in the case of the group that Dr Phelps mentioned earlier.

Mr MOREY: The Wilderness Society.

Mr ADAM CROUCH: That is a good example. There is an example of a group that has gone outside the code of behaviour, blatantly, and kept going.

Mr MOREY: We do not know that it was blatant.

Mr ADAM CROUCH: It was illegal at that point.

Mr MOREY: That is the real problem. Unions NSW went to the trouble of doing it the right way. The Wilderness Society said, "We do not care about the law. We will go ahead and do it." It punishes those people who did the right thing.

Mr ADAM CROUCH: You can come back to the Committee with an answer on that if you wish to.

Ms MINTER: It would depend on what the code of behaviour involved and on what the consequences were. We talk about candidates and political organisations being deregistered. What power would the legislation have over third-party campaigners?

Mr ADAM CROUCH: Should the same penalties apply for a breach of the code by third party? If we are talking about deregistering candidates or parties, should the same penalties apply to a third party?

Ms MINTER: Do you mean restricting them from being a third-party campaigner?

Mr ADAM CROUCH: Yes, if they breach the code of conduct.

Ms MINTER: We will take that on notice.

Mr ADAM CROUCH: On pages 4 and 5 of your submission you say:

Representatives from a variety of professions did not campaign in their current uniforms but rather in union clothing. All volunteers who presented as working in a particular profession or industry were indeed employed in that profession or industry ...

The statement is clear. It says "all volunteers". Would you clarify that the union would recommend to people that they wear union-supplied clothing and not the uniform supplied by their employer, such as the fire brigade, ambulance service or the nurses' union?

Mr MOREY: That is correct.

Mr ADAM CROUCH: Would you also confirm that every volunteer who wore that type of clothing was employed in that profession?

Mr MOREY: The ones who were campaigning in their union clothing—

Mr ADAM CROUCH: Take the nurses' federation, for example.

Mr MOREY: They have their own union scrubs, which indicate that they are members of the nurses' association. Everyone that we are aware of who was campaigning in that clothing was actually a nurse.

The CHAIR: What would you do if you found out that they were not? I put it to you that at one particular booth in the Federal election campaign one day they were wearing union scrubs, the next day they were wearing a different uniform and the next day they were wearing a GetUp! shirt. On the fourth day they were wearing a union T-shirt. I can only surmise that they were being paid by various bodies on different days. I do not know. What would you say to that? A number of people who handed out information at the Federal election must have had many professions.

Mr MOREY: Wearing a GetUp! T-shirt is not a profession.

The CHAIR: Apart from that, there were different uniforms, depending on the day of the week and which booth they were working.

Ms MINTER: I am not aware of multiple uniforms at the Federal election.

Mr MOREY: No. Are you saying that someone turned up as a nurse one day, as a fireman the next day and then as something else the next day?

The CHAIR: I am using that as an example.

Mr MOREY: Did that happen?

The CHAIR: Yes. They did not dress as a firefighter.

Mr MOREY: What were they dressed as?

The CHAIR: You are not here to question me. I am asking you.

Mr MOREY: I cannot answer the question unless I know.

The CHAIR: My question to you is: What would you do if you found out—

Mr MOREY: You mentioned GetUp! gear. GetUp! Gear is not a uniform.

The CHAIR: I also said scrubs.

Mr MOREY: You also mentioned a union T-shirt. That is not a uniform.

The CHAIR: Mr Morey, would you answer my question? What would you do if you had evidence that that was the case?

Mr MOREY: We would certainly raise it.

Mr ADAM CROUCH: Can I just clarify my question?

The CHAIR: Yes.

Mr ADAM CROUCH: The nurses example is a very good one. Gosford Hospital is located very close to Gosford train station. There were instances of people prior to the State election dressed in the nurses' union uniform. I saw those people questioned by nurses wearing NSW Health uniforms who were getting off the train and walking to the hospital. These people had no idea of the industry at all and it was quite evident to the nurses that these people were not nurses. That is why I put it to you. This did not happen just once—it happened on multiple occasions—or on one morning. A number of nurses use that train station every day. I know this for a fact. Also my wife is a nurse. She was with me one day. She quizzed one of the workers in nurses' scrubs and he could not answer the question and was quite evidently not a nurse. That is why I put it to you that that is a very broad statement saying "all volunteers" presented, because when queried they could not answer very basic questions.

Mr MOREY: I know the people who are up there and the nurses who are up there. Everyone I knew who was part of our campaign who was wearing the nurses' scrubs up there was a nurse.

Mr ADAM CROUCH: Okay.

Mr MOREY: I am happy to take that on notice to ask and confirm that for you, but I know that group and I know the people who are involved in that group. I know the ones who are up there who are nurses who do wear the scrubs. They are nurses.

Mr ADAM CROUCH: This one is a gentleman. If you can find out, take it on notice.

I have read through the statement and it says "all volunteers".

Mr MOREY: It would undermine us and our position if we agreed to people doing those things or if we endorsed that sort of thing. We have been very careful to ensure that the people who we portray or have out there who are nurses and firepeople and wear uniforms and say that is who they are, are actually those people. It would undermine us if we suddenly handed out nurses' uniforms or firefighters' uniforms to people and said, "Go out there and pretend you are."

Mr ADAM CROUCH: I have one more quick question in relation to that. Your submission states:

Representatives from a variety of professions did not campaign in their current uniforms but rather in union clothing.

Say a person is dressed up as a fireman, would they be in clothing supplied by the union?

Mr MOREY: Usually, or sometimes it can be decommissioned uniforms that they have purchased or something like that.

Mr ADAM CROUCH: Do you think it is appropriate for an old uniform to be worn which is a very close representation of the current uniform versus something that clearly says "nurses' federation"? An old uniform does not say "fireman's union". It does not show that. There is no clear identification on an old uniform to say it is a union item.

Mr MOREY: I think from memory—I will check this for you—that anyone dressed as a fireman would wear the yellow pants and those sorts of things and they would have a similar blue shirt but with the union logo on the shirt.

Mr ADAM CROUCH: I confirm that that was not the case. The *Daily Telegraph* has multiple photos of old uniforms being worn with no identification that it was a union campaign. It was in the *Daily Telegraph*.

Mr MOREY: It has got to be true then, hasn't it? The *Daily Telegraph* is a great organ—one of the great friends of the union movement.

Mr ADAM CROUCH: I have to say the photographs speak for themselves.

The Hon. Dr PETER PHELPS: It backed Albo.

Mr ADAM CROUCH: Exactly.

Mr MOREY: And on the last day was the headline with "going down with Bill Shorten" under it. He did not crash, did he?

The CHAIR: Ladies and gentlemen, I ask everyone to speak one person at a time for the benefit of our fantastic Hansard people.

Mr MOREY: I am happy to check those things for you.

Mr ADAM CROUCH: If you could.

Mr MOREY: Absolutely.

Mr ADAM CROUCH: If it is a union clarified piece of clothing it is perfectly acceptable, I would have thought, but a uniform gives an impression. The average person does not know the difference between an old uniform and a new uniform. Ask anyone in this room what the colours are and they are not going to know. That is where it gets very deceptive, I am afraid.

Mr MOREY: No, I do not think so, because those people are actually firefighters and they are actually nurses. They are volunteering their own time to participate in the democratic process. That is where they are coming from.

Mr ADAM CROUCH: And I do not disagree with that but what I do say is the clothing needs to be clearly identified like, for example, that of the nurses' federation—it is very clearly identified that it is a nurses' federation uniform not a NSW Health uniform, for instance.

Mr MOREY: Because they cannot wear them otherwise—they will be disciplined.

Mr ADAM CROUCH: Yes, as a policeman would be. There is a line there. That is a good example. We had an instance of an ambulance officer pulling up to vote. They abused a fireman for wearing an old uniform and said it was inappropriate because there was no identification that it was a union-based garment. Again this is where I would say to the unions they need to look at that and make it very clear to their members what is and is not approved.

Mr MOREY: Sure. Absolutely. People actually think that stuff through, as the nurses have, to ensure that their members are not disciplined for wearing a uniform. It clearly says on their scrubs. It goes back to the unions being very careful about how we portray these people and the messages that we are sending. We know if people get hold of the idea that we are doing that sort of stuff deceptively we will get whacked. It undermines our position and our message. The unions who have done that do take care in ensuring that they are clearly identified as union people. I am happy to go back and check that for you and come back to you on that.

Mr ADAM CROUCH: Thank you.

The CHAIR: Are there any further questions? If not, thank you very much for coming.

Mr MOREY: Thank you, Chair. This is the most fun committee I have been before.

The CHAIR: Can that be recorded?

Mr MOREY: And extremely well chaired too.

Mr ADAM CROUCH: He wants to come back.

The CHAIR: You can always come back. Thank you very much for coming in today.

Mr MOREY: Thank you very much for the opportunity. We appreciate it.

The CHAIR: If the Committee has any further questions and we submit them in writing—

Mr MOREY: Right. You will send a list of the things you want us to respond to?

The CHAIR: Sure. Are you happy to take those questions?

Mr MOREY: Yes. Absolutely.

The CHAIR: Thank you.

(Witnesses withdrew)

DR VANESSA TEAGUE, The University of Melbourne, affirmed and examined

PROFESSOR RAJEEV GORE, The Australian National University, affirmed and examined

The CHAIR: Thank you very much for attending today and presenting before this Committee. Do you have any questions in relation to the material that you have received or any procedural questions?

Professor GORE: No.

The CHAIR: Please state the capacity in which you are appearing today.

Dr TEAGUE: I am appearing in a private capacity.

Professor GORE: I am appearing on behalf of the Australian National University [ANU].

The CHAIR: Before we commence questions, would either or both of you like to provide an opening statement?

Dr TEAGUE: We would both like to. Professor Gore is going to go first.

Professor GORE: I would like to ask a sort of "what if" question. The various electoral commissions around Australia including in New South Wales have been conducting paper based elections for many years and have allowed the candidates to provide their own scrutineers to oversee the counting process. I would like to put to you a thought experiment. What if the electoral commission, whichever one it is, declared that all of this is too inefficient and too expensive and that they were going to employ a consulting firm to do the scrutineering on behalf of all the candidates—that they were going to outsource this process?

The Hon. ROBERT BORSAK: I would not tell you publicly what my answer to that would be.

Professor GORE: Right. Secondly, suppose they did outsource and carry out this process and the consulting firm wrote a report, and the report went something like this: "This report does not provide any express or implied representation on the accuracy or completeness of blah, blah, blah, of compliance with legislation or regulations, the reliable readiness of the process, the suitability of the model for future elections, improvements,"—basically saying, "We do not vouch for anything."

The Hon. ROBERT BORSAK: That sounds like an audit certificate

Dr TEAGUE: Correct. Now let us talk about iVote. I am going to talk about some of the specific details that I think are raised about the particular protocol that was used in the last State election. But I really want to back up what Professor Gore just said, because Professor Gore and I both have PhDs in computer science from fancy universities but I do not actually think you need a PhD in computer science from a fancy university to ask the questions that you should be asking about this process. That is because a lot of these questions are really in many ways common sense questions about evidence and trust. Let us turn to the specific questions about iVote. Very recently Acting Electoral Commissioner Linda Franklin had the courage to put out the PricewaterhouseCoopers [PwC] audit report into iVote more than a year after the election. I encourage you to read it; it makes very interesting reading. I am going to suggest four questions that it raises, although there are other questions as well. This is my short summary of recommendations for things that you might like to think about.

Number one is the main recommendation of the last round of this Committee after the 2011 election was about verification. In other words, the opportunity for voters to verify that the vote they entered on their computer had been accurately entered into the count. The iVote was supposed to be verifiable. It was widely advertised as such. It really was not. It was not, and let me explain why. The crucial outcome of any kind of verification mechanism, even if the protocol had been valid, ought to be one number: the rate of failure. A verification mechanism, if it is working, is like an audit. You want to find out the fraction of people who tried to verify but failed, and that should give you some kind of an estimate of the extent of a problem in the system as a whole.

If you only ask one question next Friday ask this question: Of those who telephoned in and tried to verify, what fraction failed? This question has been not been answered more than a year after the election. The NSW Electoral Commission website says that 1.7 per cent of electors who voted using iVote also used the verification service and none of them identified any anomalies with their vote. However, PwC's report describes an incident that says, "Fix signature file, which was preventing verification." I do not see how those two statements could possibly be consistent. I think that the NSW Electoral Commission website statement is leaving out the vitally important case of people who called in, tried to verify but were unable to retrieve any vote at all, because that kind of failure is just as important as calling in and successfully retrieving your vote and

finding that it does not match your intention. If we want to find out a rate of failure of iVote verifications we need to know about both those kinds of failures.

That kind of failure could have an innocent explanation. It could just be because somebody forgets their receipt number. It could be because they did not realise they were supposed to write it down properly; they had to remember 12 digits in order to verify successfully. However, it is also exactly the failure model that we would see if indeed votes had been dropped off the system due to a software error or if the security problem that Alex Halderman and I identified had been exploited to manipulate votes deliberately. If you had manipulated somebody's vote after taking control of their web browser you would not merrily give them the correct receipt number to allow them to go back and find out. You would drop their receipt number or mess it up so that when they called in to verify they could not retrieve it. In order to make a decision about iVote and whether it should be used in the next State election I think you need to know of those who tried to verify what fraction failed. My suggestion when you find out that number as an estimate of the failure rate of the whole process is that you multiply it by the whole 280,000 votes and compare it to the margin in the Legislative Council seat that was disputed and think about whether the Court of Disputed Returns should have heard about that failure rate as well. That is my first question, verification.

My second question, which harks back to Professor Gore's theme about scrutiny, relates to the integrity of the votes that went into the count. We had a process in which voters could telephone in and verify that their vote was properly included and then we had some background processing of votes that had been received and an attempt for PwC and some other parties to assess whether or not the right votes were going into the count. So how exactly did that process work? What evidence did scrutineers get about whether that process was working right? PwC's report includes one very interesting line which refers to the lock down of the software system and the security.

The software system had been carefully tested, certified and then locked down in the fortnight before the system went live. The lockdown was meant to prevent any kind of unintended modification to the software system while it was running, for obvious reasons. PwC's report, however, says that lockdown was removed for Scytl to make performance improvements to the core voting system [CVS] database. This is dated the day before the election, after about two weeks' worth of votes had been collected and with the election day collection of votes still to go. My question is who tested that update? Who certified that update? Who checked whether or not that update to the core voting system database did not have unintended consequences for the accuracy of either the votes that were already in the database or the votes that were going to be entered into the database on Election Day? The NSW Electoral Commission submission to this inquiry says, "Qualified experts (observed by scrutineers) to confirm the votes going into the count matched those verified by iVoters", but PwC's report says something very much less. It says:

Independent third parties confirmed the votes from the Verification Service matched the decrypted votes from CVS.

It does not mention anybody checking that those votes were actually the ones that went into the count. Again, I do not think you need a PhD in computer science to see that those are two very different claims. Who is checking that any of those votes accurately match the votes that actually went into the count?

The third question is about coercion. Some of you might have read Ralph McKay's submission about the resistance of the iVote protocol to coercion. His argument is that if someone had coerced somebody else into voting in a particular way and if that coerced person had gone on subsequently to revote, then the fact that the receipt numbers were available online for checking would have allowed a coercer who was pushing somebody else around to check whether or not their victim had evaded coercion and revoted instead. My analysis is that Ralph McKay is right. I do not necessarily speak to the social question of whether coercion or intimidation exists in the great State of New South Wales, but as to a technical question of whether that protocol had the security property of allowing people to evade coercion by revoting the answer is it did not have that protection.

My fourth point, which is probably what you are all expecting me to talk about, is whether or not the system was secure. During the election while the system was running Alex Halderman and I found a vulnerability in the system, which we found by looking just at the code that was in the voter's web browser. We were investigating the practice version of the system. We found a serious security hole which exposed the browsing session to both an attack called the FREAK attack and another attack called the Logjam attack, both of which involved intercepting code on its way from a third party service into the voter's browsing session. Both of them allowed an internet-based, man-in-the-middle attacker to subvert the voting session entirely, expose how the person intended to vote and send in a different vote back to the Electoral Commission. None of this would have looked at all untoward at the Electoral Commission end; it would have looked exactly like a valid vote from an eligible voter. In fact, it would have been a valid vote from an eligible voter; it just would not have been the one that that voter intended to cast.

In summary, I think you should ask exactly the questions that you would ask in Professor Gore's situation. If you had outsourced—and you did, you outsourced both the administration of this election to Scytl and the scrutineering of this part of the election to PwC and this is the report you have got.

Professor GORE: The actual statement, which I did not want to say before Dr Teague's statement, is this from the PwC report:

This report does not provide any express or implied representation on:

- the accuracy or completeness of any software, or compliance of software with legislation or regulations;

—in other words, we do not know whether the software does what the legislation says it should do—

- the go-live readiness of the iVote software—

the bugs that Dr Teague found—

- the suitability of the iVote software for future elections;
- previous versions of the iVote software, or;
- improvements made to the iVote software following previous audits or independent reviews.

I think that is on page 5 of the report, the very first indemnity insurance—or whatever you want to call it—that PwC report has taken out.

The Hon. ROBERT BORSAK: That is interesting because you are talking to probably the most sceptical iVote person in the place when you are talking to me. Having been involved with software for a long time, especially your first recommendation about dumping telephone and internet voting I support wholeheartedly. Unless you have a dedicated point-to-point system—the old online systems we used to have and they are virtually impossible to get these days with the way the cloud operates—

Professor GORE: A slight caveat because the original version of iVote that was designed five or so years ago, when it was first used was supposed to be only for visually impaired voters.

The Hon. ROBERT BORSAK: We understand that.

Professor GORE: That was some small number—500, 5,000 or something like that. We have no problems with that because as far we can see those people are disenfranchised from the privacy of their vote. If this is possible for allowing a small number of voters then maybe we should consider it.

Dr TEAGUE: No, I do not agree with that.

The Hon. ROBERT BORSAK: I am only speaking for myself, but my clear impression from being on this Committee for a lot of years is that iVote is being touted to us as being the solution to all the ills and all the expense involved in voting. It is very clear that the message you are giving, if I am correct, is that it is not that and we should not even be contemplating it—in fact, we should be winding it back.

Professor GORE: In particular you should be looking at is the Scytl website that says things like, "the largest ever binding election run by Scytl software". It does not say anything about any of the problems that Dr Teague found.

The Hon. ROBERT BORSAK: Certainly, the qualifications you read on the certificate from PwC—I have read plenty of audit certificates in my life and that is just another one of those. They say they have done the checking and this is what they say, but in the end you are on your own. "If you find a problem, do not come sue us because we told you so."

Professor GORE: What we are saying is that is okay for the kindergarten software that runs some not particularly dangerous notion, but when you are electing government, that should not be on the first or second page.

The Hon. ROBERT BORSAK: Antony Green was sort of heading down this track this morning in his evidence. He basically said that he did not think we should be pursuing computerised voting in the sort of model we are developing in this State. That is certainly the message I got from part of what he was saying.

Professor GORE: I would like to add that the Electoral Commissioners are caught between a rock and a hard place. They are being hammered by budget cuts and the increasing costs of running paper-based elections. On the one hand they are told they have a budget of \$N million to run an election and it is getting more and more expensive every year to run such an election.

The Hon. ROBERT BORSAK: Sure, but they will get hammered with the sack if they get it wrong. We have seen that happen federally, in the Federal election before last when they lost all of those votes in Western Australia.

Professor GORE: I have been looking at this for the last 10 or 15 years now and I have tried to engage the ACT Electoral Commissioner. My experience is that his heart is in the right place but he is not a software expert. What does he do? He puts out a request for tenders, "We want software that does this and this and this", and commercial companies come and say, "Yes, we can do this, no problem. It is just like internet banking. You trust internet banking." The point is it is not like internet banking.

The Hon. ROBERT BORSAK: That was the example that Antony Green used this morning. That is the reason why we get 24 per cent interest rate on our overdue credit cards, because fraud occurs so often on internet banking. That expense is bearable as long as you are prepared to have such a high cost of operating, whereas in the electoral process our insistence is that every vote has to be accurately counted down to the last one. No software can guarantee that—I do not care what anybody says.

Professor GORE: We have a grant and we are producing fresh software.

The CHAIR: Would you support any version of electronic voting on Election Day that involves still going into a polling booth?

Dr TEAGUE: Yes, I think there are very sensible solutions in a polling booth where the key thing is not trusting the perfect security and correctness of the software but of having some other independent method for verifying that it is doing the right thing. For example, you could enter your vote on a computer and print out a paper record of how you voted, look at the paper record and put it in the actual box. The Victorian Electoral Commission ran a much more complicated system that I had a lot to do with the design of on the same thing, getting evidence at each step of the process doing the right thing. You not just test it but actually verify that your individual vote is being accurately recorded. There was a small project that collected a little over 1,000 votes in London at the Australian High Commission, a supervised polling place in a distant location. The votes were transferred to Melbourne electronically but with proof that the encrypted receipts that the voters had generated in the polling place had been accurately transferred back to Melbourne.

The Hon. ROBERT BORSAK: Was there some sort of batch control or test digits?

Dr TEAGUE: It was actually a direct encrypted version of the votes so that the information that the voter got to take home with them exactly matched the information that had been sent over the internet back to Melbourne.

The Hon. ROBERT BORSAK: How does a scrutineer match that?

Mr ADAM CROUCH: How is that verified?

Dr TEAGUE: There are two steps to the verification process. I should say before I go into the geek details that I think the Victorian Electoral Commission found it very complicated and very difficult to run and I am not sure that they are going to run it again. It was very much a research project and perhaps the main thing we learned from the research project was that it was too complicated. The first step was in the polling place where the voter interacts with a computer and prints out two things. One is an encrypted version of the list of candidates and the other is a plain text list of the preferences that they have chosen. They can look at the two printouts they have made and make sure that their vote is accurately reflected. They walk out with just the encrypted representation of their vote so they cannot prove to anybody else how they voted. The encrypted representation of their vote goes up on a website and all of the encrypted votes are carefully decrypted with mathematical proof that they have been validly decrypted.

The Hon. ROBERT BORSAK: No wonder they want to give it up.

Dr TEAGUE: Yes, indeed. On the one hand this is my project and I thought it was cool; on the other hand it was far too complicated for the Victorian Electoral Commission to run and I respect that, which is why I am now saying that a system in which you just print out a plain piece of paper at a polling place has a lot going for it.

The Hon. ROBERT BORSAK: If the model is that you interact with a computer or system within the polling place, what if you have 80 polling places in an electorate? How do you guarantee that you going to tie all of them together in a way that is immediately verifiable and auditable?

Professor GORE: You do not need to; that is the point. Even if the computers had bugs in them, if I vote for Vanessa and the printouts says I have just voted for Deirdre I would know that my vote has been tampered with.

Dr TEAGUE: It is designed to give you proof.

The Hon. ROBERT BORSAK: Who is going to go back to the individual, who is sitting at home having voted and thrown their piece of paper in the bin?

Professor GORE: No, they do not walk out with their vote. They cast their vote. Instead of using a pencil to write your vote, you use a computer to write your vote, print it out and put that piece of paper in a box.

The CHAIR: And you still count the ballot papers.

The Hon. Dr PETER PHELPS: Why are we paying \$500 for a computer when you can pay 50c for a pencil, in that case?

Dr TEAGUE: The question was: Can we use the electronic voting? That was the answer, but I do not necessarily say that you should. The question was: is there a form of electronic voting that—

The Hon. Dr PETER PHELPS: And the answer is no. The only way you have a form of electronic voting that replicates the integrity of the system is something that essentially costs a lot of money to do what is done at the current time.

Dr TEAGUE: No.

Professor GORE: No, the vVote system is a counter example to that. It allows the voter to cast their paper ballot, but also to have an electronic copy on their computer. The counting process now does not need to scan the paper ballots, and no-one needs to type them in or input them using some other method. There is another electronic version of the vote that is guarantee to be an exact replicate of the one visually put into the ballot box. That goes some separate way. There can be hackers in the way, but it does not matter because it is encrypted; no-one can tamper with it. It eventually goes to the electoral commission. If it does not arrive, I as the voter can check and see that it has not arrived because it is not on the bulletin board. If it does arrive, it is decrypted in such a way that it is not tied back to me, and it is then counted electronically.

What you need to be sure about is that the program doing the counting is correctly implemented. That is what my Australian Research Council Grant is working on. Yes, it is a very expensive pencil, but we do get benefits. We can count electronically. We do not need to scan the ballots and rely on OCR recognition. We have an electronic version of the vote, which is exactly what the voter intended; it is voter verified.

The Hon. COURTNEY HOUSSOS: I come back to your original point about what has happened with the iVote system. We have outsourced both the election and the scrutiny. In the vVote encryption system there is no option for the parties or candidates to scrutinise that the vote matches the original vote; that is up to the individual. Ultimately, to be fair, it is not the individuals who care so much about the accuracy of their ballot; it is generally the candidates or the parties.

Dr TEAGUE: I would not necessarily advocate adopting vVote or a similar system here. I agree with Professor Gore that there are gains. However, I also agree that the complexity and expense is not necessarily justified by those gains. It does provide evidence that all of the encrypted votes have been properly decrypted and tallied, and that evidence is valid in a mathematical way. You could find sufficiently diligent geeks in your political organisation to look over the proofs, but in practice it is very hard to find the right people. I think it was a good thing to try at the Victorian State election; I am glad the experiment was done in Victoria. I think the fact that the Victorian Electoral Commission [VEC] found it as difficult as it did means that those kinds of systems still need significant reengineering before I would feel comfortable recommending them to other people. The best model of electronic voting—if indeed you want any electronic voting at all—would be something more simple and much more obviously verifiable with a piece of paper. That does not answer Dr Phelps' question, which asked why we would want to do this in the first place.

Professor GORE: Dr Phelps asked whether casting a vote using the vVote system gave any assurances to the voter.

The Hon. COURTNEY HOUSSOS: No, I am asking about candidate or representative scrutiny.

Professor GORE: You could have a candidate representative who does a dummy vote.

Dr TEAGUE: No, it is about the actual votes being directly verifiable.

Professor GORE: But you can verify the machine offline.

Dr TEAGUE: We can argue about this outside.

The Hon. PETER PRIMROSE: I specifically want to deal with the concerns you have raised about iVote. Have you put those concerns to the NSW Electoral Commission? If so, have you received a response?

Dr TEAGUE: There is a long story.

The Hon. PETER PRIMROSE: Was the response in writing?

Mr ADAM CROUCH: And was it verified?

Dr TEAGUE: This has been going on for some years. In 2013, a draft version of the protocol was proposed for 2015, and it was put up on the website. There was an open call for comments, and we wrote a collection of explanations of why the protocol did not do exactly what they thought it did. It did not address issues such as the soundness of the verification mechanism, the adequacy of the cryptographic keys they were proposing to use, and a couple of other issues, including privacy. We received a form letter in reply thanking us for our feedback and advising us that they would get back to us with any questions they had.

When Alex and I found the security problem during the iVote run, having already had some not very positive interaction with the NSW Electoral Commission, we decide to notify the Australian Computer Emergency Response Team first. It is a clearing house for security violations. We notified them and they notified the NSW Electoral Commission on our behalf. After that it all got somewhat unpleasant. I am not sure the commission fully understood the difference between identifying a vulnerability so that it could be fixed and personally attacking it in some way.

Since then, and since there has been a change of management at the commission, more recently with Andrew Conway and Michelle Blom we found a bug in the counting software used to count votes in both the Legislative Council and local government elections. We contacted Linda Franklin and told her about it. She checked it out and agreed that it was an error and got it fixed, and then both we and the commission made a joint announcement. It was a very subtle bug that arose in very unusual circumstances. It just happened to shift the probability of one particular outcome in the Griffith local government area in favour of one candidate rather than another. We know that it did not have an effect on the outcome.

Professor GORE: There is one thing that Dr Teague is not willing to say, but I am. You asked about responses from the NSW Electoral Commission. Dr Teague can correct me if I am wrong, but my understanding is that a complaint was made to the University of Melbourne alleging, I think, that Dr Teague was using unethical research methods. The university was obliged to investigate. It did so and cleared her completely. So there was some feedback from the commission.

The Hon. Dr PETER PHELPS: It was just to shoot the messenger.

Dr TEAGUE: Exactly.

Professor GORE: You said it, not me.

The Hon. PETER PRIMROSE: My issues are obvious and this is way beyond my level of expertise or knowledge. I can now use my iPhone. The NSW Electoral Commission will appear before the Committee and we will ask questions. It will respond and most of us will not understand the answers, and we will get it to take questions on notice. I am trying to work out, rather than reinvent the wheel, what point the communications have reached. This is not a political question; I am simply trying to understand this so we that we know who is not grasping it. For instance, do we need to look at external agencies? The Committee may consider involving the Auditor General. I am trying to work out who would be the responsible agency to ensure that your concerns are being adequately addressed.

Dr TEAGUE: That is a really good question, but I do not know the answer. That is part of the reason we were both trying to direct the question to who you are trusting and what you are seeking. These are the kinds of questions that do not necessarily relate only to the mathematical details of the software system. The Committee will also hear from the software vendor and you will think about the implications. Part of the problem is that there is very little genuinely expert scrutiny or understanding of these systems.

Professor GORE: There is a paper written about 10 or 15 years ago by a computer scientist who basically said that we should be treating electronic voting software and vote counting software in a mission critical way, and that is the message that we are trying to get across to the Electoral Commissions. They say, "Yes, fine, that is all good, but mission critical software costs 10 times as much as what I can go and procure from my local software vendor. My software vendor assures me that it meets all the requirements that I have asked of him or her". All of the test cases that we have done show that the software is more accurately counting the votes than my team of experts who have been doing it for the last 20 years. So everything is fine.

We, for example, have found three bugs in the ACT election vote-counting software. For each bug we were able to design an election where it would give the wrong result, but what we were also able to do is go back and check the votes for the last four elections, because they were published, and we can confirm that those

bugs did not manifest themselves. But when we say to the Electoral Commissioner after the first one that we found this bug, he said, "Fine, great"—

The Hon. ROBERT BORSAK: But that is just luck; that is not good management.

Professor GORE: Exactly. What we said is, "Look, you fixed it but how do you know there isn't another one?"

The Hon. ROBERT BORSAK: Well, you do not know what you do not know.

Professor GORE: Exactly. Donald Rumsfeld was very right. When it got to the third stage and we said, "Look, we have now found three bugs and you are happy with the software. How do you know there isn't a fourth?" he just stopped replying.

Dr TEAGUE: Exactly the same thing in New South Wales, by the way. We found one bug in the counting software and one hole in the internet voting software.

The Hon. ROBERT BORSAK: They got fixed. They complained to the University of Melbourne.

Professor GORE: But it is not their fault; they are not experts at procuring mission critical systems. Please do not go and hammer them.

Mr ADAM CROUCH: It is not the Electoral Commission, it is the supplier of the software.

The Hon. ROBERT BORSAK: It is their fault and responsibility.

Professor GORE: The supplier of the software is running a business. NSA.

Mr ADAM CROUCH: What we are saying is it is not the Electoral Commission who are at fault. They do not have the expertise.

The Hon. Dr PETER PHELPS: I just want to draw your attention to and get your comment on an article written by a guy called Dan Nolan, who is a software engineer and the co-founder of Proxima, which is a computer start-up in New South Wales. He said:

To build an end-to-end e-voting system would be an absolute money pit with no tangible benefits over the existing system. We could not guarantee that it was built correctly, even with source code audits. We could not guarantee that it would be accessible to those who are vision impaired or from culturally and linguistically diverse backgrounds. We could not guarantee that it would be even as secure as our current voting system and we couldn't guarantee that people would trust it more than the current system.

We should leave e-voting where it needs to be: on the trash-heap of bad ideas.

Do you believe Mr Nolan, who is hardly a luddite, is correct in his assessment of e-voting systems?

Professor GORE: It depends what you mean by e-voting.

Dr TEAGUE: There are five points and there are different kinds of e-voting. I definitely agree, if he is talking about Internet voting. If he is talking about putting a computer in a polling place, I think they are sensible solutions if you wanted to do it.

The Hon. Dr PETER PHELPS: But the argument for having a computer in a polling place, which produces a ballot paper which you then put in a ballot box, the only possible thing you could say would be well, it would make the numbering clearer so arguments over whether that is a seven or a one would arguably disappear, and if you relied upon the electronic version of the ballot you would have an earlier initial count. But then that leaves open the issue of are we really prepared to spend that money, because it has capital equipment costs and has software costs and it has auditing costs, to do something which will give us earlier results when by 11 o'clock we have the results to a large degree anyway. As he said:

Sure, you might have to wait a few days for the answer but a few more days of caretaker government aren't worth undermining our entire democratic project.

Dr TEAGUE: I totally agree with that.

Professor GORE: If you actually think about some of the newspaper articles that have been written—"We are still waiting and it is five days after the election", "We are still waiting and it is eight days after the election"—the EC is amazing; they counted 15 million votes in eight days.

The Hon. Dr PETER PHELPS: You guys are experts, Mr Nolan is actually in the industry; you are more sceptical about the safety and security of the potential processes than what might be termed the laymen. You are more sceptical because you know exactly the problems which can occur in the creation of software to do this.

Professor GORE: Vanessa's colleague Alex Halderman is a professor of computer security at the University of Michigan and one of his famous comments, which he always likes to make is something like this: the problems that we need to solve in order to get internet voting secure and done properly are some of the hardest problems in computer security, which all researchers around the world are trying to tackle at the moment. He is a professor of computer security, I am not. So what he is basically saying is, "We have not solved the basic computer security problems in order for you to go and do this. So please don't think that it is like electronic banking because it is not".

The Hon. Dr PETER PHELPS: And it is not an argument that it will never happen.

Professor GORE: No.

The Hon. Dr PETER PHELPS: It is just that it should not be happening at the current time.

Professor GORE: "Yet" is always the magical thing that he finishes with—"Don't do it yet".

Mr ADAM CROUCH: As a luddite I have to ask this. Dr Phelps' concern with regards to hardware versus the pencil—could we not have standard hardware used across the Federal, State and local government elections? Could you not have the same software being rolled out at every election so rather than the cost being enormous and reinventing it every time, you use the same hardware at every election? Would that not defray that cost and could it not be utilised that way?

Dr TEAGUE: This is possibly outside what I actually understand, but I have never understood why the Electoral Commissions do not work together better. Not only do they not share hardware, they do not share software. I do not see there is any reason why they should not share software.

The CHAIR: They do not share electoral rolls.

Mr ADAM CROUCH: That was of your points earlier, the electoral roll is not standardised.

Professor GORE: Just a counter-point there: all of this stuff about hardware is wonderful but at the end of the day it is made somewhere overseas and I do not know what is in it.

The Hon. ROBERT BORSAK: It is made in China.

Professor GORE: Or, even better, the chip has been made in America and it has got a back-door in it because their NSA told the company to do so.

Mr ADAM CROUCH: Is there not some way that hardware can be checked?

Dr TEAGUE: You could print out a paper record and then you could check directly with—

Mr ADAM CROUCH: This was the whole point. To print the paper ballot was not to actually count the vote, it was there as a verification. So if there was an anomaly, a sample count could be done of the paper ballots. Someone has said, "Hang on, there is an anomaly here which would indicate that there is some either bug or glitch or tampering with the system".

The Hon. Dr PETER PHELPS: But how would you know? If you are taking your receipt out of the polling booth with you—

Mr ADAM CROUCH: But you are not. The paper goes into a box and that is kept separately.

The Hon. Dr PETER PHELPS: That is what we do now. Why not just use the existing system?

Mr ADAM CROUCH: What I am saying is that you have got an instant response where you voted in the booth, you have got a ticket to collect—it is almost like a receipt and a proof of purchase that goes into a box which is kept aside and if there are queries about the voting numbers you can collect them against the paper comparisons.

The Hon. ROBERT BORSAK: You are assuming you are only going to count it once and then go into it electronically. You are not going to do that. They would count the manual checks as well.

Mr ADAM CROUCH: You would not need to count them more than once unless there was a discrepancy.

Dr TEAGUE: This kind of an idea is fairly common in the United States and because their electoral administration is a bit of a mess they tend to have a few different counties doing a few different kinds of things. But the idea that you get an electronic tally and then you have some random auditing of a paper record that our voter has looked at is quite a common idea in the United States. There are some very sophisticated statistics

around how you decide when to audit and how much you audit and how you derive confidence that that result is right and how you deal with it when you notice discrepancies in the audit and so on.

So I kind of hear both of the questions that are being asked both by Dr Phelps and Mr Crouch. I think you are both kind of right. On the one hand you would gain something from that system and it would be quite sensible and you would be able to check the integrity if you audit the paper record diligently. On the other hand, it is not quite clear to me what you gain for the considerable expense that you would spend.

Mr ADAM CROUCH: Do you think there is a public expectation that we should be progressing down that sort of path where you walk into a polling booth and rather being handed a piece of paper by somebody and then going to a booth with a pencil? Almost everything we do these days uses an on-line process and is computerised. Do you think the public expectation now is that we are behind the times with the way we vote?

Dr TEAGUE: I think there is an argument for people who have difficulty with a pencil and a piece of paper, people who have motor disabilities or people who cannot see. I think they have point asking for a computerised interface that can address their needs and allow them to express their own vote in the way that they are able. I do not necessarily see the argument for everybody else, for people who can use a pencil. I do not see anything wrong with the solution that you are proposing.

Professor GORE: But that is not his question. His question is does your mum expect that there should be software so that she can vote on her iPhone?

Mr ADAM CROUCH: Is there a public expectation?

Professor GORE: There is a public expectation and it is a misconception, yes, and it is based on the fallacy— Dr Teague you read that article before but there was a similar article by another chairman of a company or a start-up company, I forget the name but I could find it for you if you like, who said the exact opposite. He said "I do not see any reason why we cannot have an Internet voting system which is totally secure, up and running for the cost a couple of million dollars." I think he is from Western Australia.

The Hon. ROBERT BORSACK: He was a boss of a start-up, that is why he was saying it.

Professor GORE: What I would say is that this person who is the boss of a start-up who is saying "be careful" is actually really on the ball. Right? Because usually what you see from start-ups is "Of course, we can do it. Just give us the contract." That is what ScytI will be saying on its web site—280,000 votes, the largest binding government election in the world, why are you not using ScytI software.

The Hon. COURTNEY HOUSSOS: I was in the middle of asking you about Vvote. I realise you are not advocating for that to be utilised everywhere. You talked about the encrypted file being sent back but that there was also a paper plain text record. Was the paper plain text record kept?

Dr TEAGUE: It takes a bit of explaining which is part of the problem.

The Hon. COURTNEY HOUSSOS: My question is: did the Vvote experience mirror what we are talking about except offering encryption as well?

Dr TEAGUE: No it is a different design altogether. It does offer evidence right from the voter's intention all the way through to the final output, it does not in its present form retain a plain paper record. It provides the voters with a printout in the polling place that they can use to check, but then it gets transformed into just an encrypted receipt which they walk out with and which is subsequently posted on line. So the back end processing is verifiable with maths but there is not a plain paper record.

The Hon. COURTNEY HOUSSOS: The plain paper record that they print out was not retained and they did not then check that against it?

Dr TEAGUE: It was not retained, right, it is destroyed.

Professor GORE: There is one other question which has not been touched on which is actually the area that I work in. What we have been talking about is verifying vote casting and verified vote transmission. At the end of the day the votes are with the Electoral Commission and it has to count them. In America it is easy, you just add one for every vote. In Australia it is far from easy. We have got four or five different versions of single transferable voting, all of which have different properties. If you read the specification of how they are written, for example, the one in the Australian Capital Territory, it is 14 pages of legal gobbledygook. So clause 14 A says you do something, and clause 14 B says "in the case where such and such happens clause 14 A does not apply and you should actually apply clause 14 C." We tried to read that and it is completely incomprehensible.

So actually counting the votes by hand is a very specialised topic. This gets back to what you were touching on before which is that why would this ACT Electoral Commissioner go down the route of electronic vote counting? Because what he says to me all the time whenever I challenge him is "We did the tests and we got my local experts who have been counting votes by hand for 20 years and we did tests and the software was better because it made less mistakes." What we are saying is, "Yes, it might be better on your tests but it had three bugs in it which would have given the wrong results, uniformly given the wrong results and you would not have even known." That is the second thing that is sort of the elephant in the room. This is complicated software and you do not know what it is doing. As I said, first point in the PWC report states:

This report does not provide any express or implied representation on:

- the accuracy or completeness of any software, or compliance of software with legislation or regulations;

The Hon. Dr PETER PHELPS: If we are stuck with electronic voting as Mr Crouch and his friends of Skynet would like to have, do you believe open source of a code should be made available?

Dr TEAGUE: I think it helps a lot because it just makes it easier to find bugs.

The Hon. Dr PETER PHELPS: Do you believe the countervailing argument that it allows people the ability to break the integrity of the system has any validity?

Professor GORE: It is absolute rubbish because the security of the system is a completely separate process from the vote counting process. If you are sure that all your votes are on this computer in a secure way, disconnect it from the internet and run your vote counting software. Your vote counting software says, "When you see a ballot that looks like this increment one vote there, one vote there, it says nothing about the internet so even if someone hacks into your system and changes the software, just make sure that you load the correct software onto the one that is counting. That is a complete furphy.

I do not know whether you are aware of it or not but there was a freedom of information request made to the Australian Electoral Commission from a lawyer in Tasmania asking for the source code of the Senate vote counting software. It was denied on the grounds that (a) making the vote counting software public would create security vulnerability—

Dr TEAGUE: Although weirdly enough they dropped that argument.

Professor GORE: And (b) it was commercial-in-confidence. What I know is that the AEC makes roughly \$19 million a year running private elections for companies. That is why it is commercial-in-confidence because it protects that business. Should the Australian Electoral Commission be claiming that the vote counting software is commercial-in-confidence it just beggars belief.

The Hon. Dr PETER PHELPS: But it is even more important in New South Wales in our State upper House because not only do we have the single transferable vote but you also have a selection method or ostensibly a randomised selection method. What is the seed numbers for the randomisation?

Dr TEAGUE: We wrote this in our submission—I do not know you are asking about that for exactly this. If you look at the most recent Legislative Council outcome and you run it a million times you get the same answer every time. If you look through the local government results and run each local government count a few thousand times you do get quite different results for quite a few local councils. There are quite a few local councils where that random selection in the redistribution of votes over a quota can change who wins, especially that very last seat. The importance of demonstrating that those random numbers have been fairly chosen is huge.

The Hon. ROBERT BORSAK: One cannot be too sceptical about this.

Dr TEAGUE: Apart from the bug that we found, there are also cases where, even though it does not seem that there was a bug, 97 per cent of the time there was someone who ought to have won but did not. Is that just a 3 per cent probability event? A 3 per cent probability event happens sometimes. Or was the selection of randomness that was used in those counts not necessarily perfectly fair? This is yet another very good reason for open-sourcing software, because you could then seed the random number generator in a public way. You could borrow the Tattsлото machine or roll some dice in the middle of the room and use that as the seed. Then, if the source code were openly available, everybody could run exactly that same computation and obtain exactly the same answers, given that randomness

Professor GORE: You could also put the legislation into a form that was not made up of clauses of legalese—

Dr TEAGUE: You could also get rid of the randomness altogether

Professor GORE: then the various parties could hire their own people to code it. Each political party could count the ballots independently and say, "Wait a minute; at count number 15 Vanessa gets three votes but our counting says that she gets four." You could go back and check it.

The Hon. ROBERT BORSAK: Plain English legislation—now there is an idea.

Professor GORE: That is another Australian Research Council grant. We are getting there.

The CHAIR: There are no further questions. It has been an interesting debate. I feel as though I have been watching an episode of *The Big Bang Theory*. I have learned a lot. Thank you very much. You have taken a number of questions on notice. I am sure the Committee will want to ask you more questions after hearing from the Electoral Commissioner next. Would you be prepared to receive those written questions on notice and provide a response?

Dr TEAGUE: I would be very happy to.

Professor GORE: Yes, of course.

The CHAIR: Thank you very much. It has been very informative.

Professor GORE: I have one question. Apparently Scytl will be appearing at the hearing next week. Is that correct?

The CHAIR: Yes.

Professor GORE: May I attend?

The CHAIR: Yes. It is a public hearing.

Professor GORE: Thank you.

(The witnesses withdrew)

(The Committee adjourned at 16:40)