

**REPORT ON PROCEEDINGS BEFORE**

**JOINT STANDING COMMITTEE ON ELECTORAL  
MATTERS**

**INQUIRY INTO THE ADMINISTRATION OF THE 2019 NSW STATE  
ELECTION**

**Virtual hearing via videoconference on Monday 22 June 2020.**

**The Committee met at 10:10**

**PRESENT**

Mr Lee Evans(Chair)

**Legislative Council**

The Hon. Robert Borsak  
The Hon. Catherine Cusack  
The Hon. Ben Franklin  
The Hon. Courtney Houssos  
The Hon. Peter Primrose

**Legislative Assembly**

Mr Christopher Gulaptis  
Mr Paul Scully  
Mr Nathaniel Smith  
Ms Felicity Wilson (Deputy Chair)



**The CHAIR:** I now declare open the hearing of the inquiry into the administration of the 2019 New South Wales State election by the Joint Standing Committee on Electoral Matters. I welcome representatives from the New South Wales Electoral Commission: Mr John Schmidt, who is the New South Wales Electoral Commissioner; Mr John Cant, who is the Executive Director of Information Services; Mr Simon Kwok, who is the Executive Director—Elections; Ms Rachel McCallum, who is the Executive Director—Funding, Disclosures and Compliance and General Counsel; Mr Matt Phillips, Executive Director—Corporate; and Mr Mark Radcliffe, Director—Election Innovation. As part of the formalities, I ask each witness to take either an oath or make an affirmation and state the capacity in which each witness appears.

**JOHN SCHMIDT**, New South Wales Electoral Commissioner, NSW Electoral Commission, affirmed and examined

**JOHN ANDREW CANT**, Executive Director—Information Services, NSW Electoral Commission, affirmed and examined

**SIMON SHIU FAI KWOK**, Executive Director—Elections, NSW Electoral Commission, affirmed and examined

**RACHEL McCALLUM**, Executive Director—Funding, Disclosure and Compliance and General Counsel, NSW Electoral Commission, affirmed and examined

**MATTHEW WILLIAM PHILLIPS**, Executive Director—Corporate, NSW Electoral Commission, sworn and examined

**MARK DAVID RADCLIFFE**, Director—Election Innovation, NSW Electoral Commission, affirmed and examined

**The CHAIR:** I thank our witnesses for appearing before the Committee and for giving evidence. Could you please confirm that you have been issued with information about the standing orders in relation to the examination of witnesses?

**Mr SCHMIDT:** Yes.

**The CHAIR:** Do you have any questions about that information?

**Mr KWOK:** No.

**Mr SCHMIDT:** No.

**The CHAIR:** Thank you very much. Commissioner, at the first hearing of this inquiry held on 18 November 2019 the Committee questioned you about your report on the conduct of the 2019 New South Wales election tabled in Parliament on 24 October 2019. You agreed the report should be included as part of the formal evidence to the inquiry. During the first hearing and the second hearing, held on 19 February 2020, the Committee also heard evidence from a range of other stakeholders. This third hearing now gives the Committee an opportunity to further discuss with you particular issues raised by witnesses during previous hearings. However, in this first instance, would you or your staff like to make a short opening statement before we begin questions from Committee members?

**Mr SCHMIDT:** Thank you, Chair. No. We have no opening statement. I am happy to go straight to questions.

**The CHAIR:** Excellent. When members wish to ask a question, please identify yourself prior to launching into it. That would be greatly appreciated. Are there any questions?

**The Hon. BEN FRANKLIN:** I might start, Chair, if that is okay.

**The CHAIR:** Mr Franklin, go ahead.

**The Hon. BEN FRANKLIN:** Thanks very much. Mr Schmidt and team, thank you once again for appearing before us. Obviously we are very appreciative of the seriousness with which you treat this, which goes without saying because of the number of senior staff attending. Thank you very much for that. There are just a few bits and pieces I want to raised that came out of other evidence that people have given since your testimony and I will ask for responses to those, if that is okay. The first is about the short-form ballot paper. Obviously in your original submission you talked about the potential to have a short-form Legislative Council [LC] ballot paper. You identified some of the challenges of having such a large ballot paper. Commissioner, could you or someone discuss how such a ballot paper might work in your mind? Practically and logistically, what would it look like and how would it work?

**Mr SCHMIDT:** Thank you, Mr Franklin. I noted with interest Antony Green had some interesting observations to make—

**The Hon. BEN FRANKLIN:** I will get to those as well.

**Mr SCHMIDT:** —and has made some good suggestions. We have had some preliminary thoughts about how it might be. Again I am grateful to Antony because one of the threshold questions is: What would it look like? If you just have above the line, do you have a long strip of paper? Do you have adjoining columns for the above the line? That raises questions about the order and the way it presents to the elector. We would envisage at

this stage—and of course this is something, if the Committee was willing to recommend it; and of course I always welcome and am interested to hear any feedback from Committee members as to their thoughts—that a person attending in person voting would be given the option of having the above line paper, whatever looks like, or the full sheet, having in mind that in excess of 90 per cent of people at the last election did vote above the line.

With postal voting, people have much more time and ability to sit and contemplate their preferences. It may well be it would be appropriate to send the full ballot paper out to people in those circumstances. Internet voting—iVote of course—again you could program it so that in a sense you have that option anyway because you vote above or below the line and it is not such an issue. But in person it would raise logistical issues about the amount of time it would take to process to get people through what is a new process. If there is support for this we could try to mock up some examples of what it might look like for the Committee to consider but it is a work in progress.

**The Hon. BEN FRANKLIN:** Do you think that it would actually cut the number of informal ballots by having this option?

**Mr SCHMIDT:** I believe it actually would. One of the things you see—and I am just going from my recollection now from the election report itself—of the informal ballots in the upper House, if I recall correctly one-half of those were blank. People had made no effort whatsoever to fill them in, which is a different percentage to the Legislative Assembly [LA]. This is one of those things that until you try it you can never be quite sure, but I would hope that that would go towards reducing informality: That people just do not get overwhelmed by the size of the ballot paper and decide not to make an effort.

**The Hon. BEN FRANKLIN:** Do you have some understanding of what the percentage of blank ballot papers for the upper House compared with the lower House is?

**Mr SCHMIDT:** Yes, I do, if you bear with me for a minute. This is one of the beauties of this approach. I have the report on my screen. Mr Kwok, you might have the figures at your fingertips while I have a look. Do you know the percentage split between the LA and the LC?

**Mr KWOK:** Yes. The blank for LA ballot papers were 139,507, compared with the LC, whose blanks were 200,258, so they were higher. In terms of proportion, 66 per cent of the informal LC ballot papers were blanks.

**The Hon. BEN FRANKLIN:** The ballot number is 50 per cent higher, so that is quite significant. I think if potentially we are looking at enfranchising those extra 60,000 or so extra votes, I think that is a pretty worthwhile aim, right?

**Mr SCHMIDT:** Yes.

**The Hon. BEN FRANKLIN:** Sorry to get right into the weeds on this, but I am bit of a nerd on this stuff. The other question is: Do you have any sense of what the difference between the informality rate for above the line is to below the line of those who did fill in ballot papers?

**Mr SCHMIDT:** Mr Kwok, do you have any figures for that?

**Mr KWOK:** Commenting on informality above the line and below the line, I do not have that at my fingertips, but we can certainly take that question on notice and provide the figures to the Committee. I guess in terms of my experience, people tend to struggle more when they vote below the line. My suggestion is that they tend to be higher informality rates because you are required to put in at least 15 preferences below the line, as opposed to above the line, where only one preference would suffice.

**The Hon. BEN FRANKLIN:** Mr Chair, I have other questions but perhaps other Committee members may like to talk about the short-form ballot paper. I do not know if they have issues or questions they wanted to raise as well.

**The CHAIR:** Do any other Committee members have questions on that subject? Looks like you have the floor, Mr Franklin.

**The Hon. BEN FRANKLIN:** Excellent. For what it is worth, Commissioner, I do think it is a good idea. I think that we at least should pursue this a little. It would be wonderful if you are able to, without in any way pre-empting the Committee's findings, potentially start considering what a short-form ballot paper might look like, because those numbers that Mr Kwok just gave, which is basically an extra 50 per cent of people pretty much voting blank on the LC rather than the LA, I think mean that it is really worthwhile considering.

**Mr SCHMIDT:** Thank you.

**The Hon. BEN FRANKLIN:** The next issue I wanted to talk about was homeless voters. We heard from some of the industry associations or groups that they had a look at some of the material coming out of Victoria for what the Victorian Electoral Commission is doing in terms of providing actual resources specifically targeting and discussing the issues of homelessness or homeless voters. I was just wondering, I do not seem to see very much coming from New South Wales. I was wondering if you have a strategy around that or what the plans are to try to enfranchise more homeless folk, just providing for resources?

**Mr SCHMIDT:** Thank you, Mr Franklin. It is a very good question. We certainly have been aware of the extra work and the good work that has been done by Victoria. The Commission, or representatives of the Commission, met earlier this year with Homelessness NSW to try to develop a joint pilot program in the lead-up to the local government elections. The aim of that pilot it is to increase both awareness and voting amongst individuals who are experiencing homelessness. That work is in train and we are seeing what we can do and certainly liaising with our Victorian colleagues to learn from their experience. There is one fine difference between New South Wales and Victoria.

It is back to the perennial issue and the drum that I constantly beat about: continuity of funding. We tend to get funding for engagement as part of the election cycle, not as part of our core funding base, so we take every election opportunity, which are the major events, to try to enhance our engagement, but that has been a problem. I will be honest with you: We have not done as much as we could have done in the homelessness space.

**The Hon. BEN FRANKLIN:** We saw and received a copy of the brochure that the Victorian Commission put out. I do not know if you have seen that, Commissioner, but it is excellent. These brochures are then distributed to a range of homeless centres, key advocacy bodies and so on for distribution. I was just wondering if there are any plans for doing something similar in New South Wales.

**Mr SCHMIDT:** I have not seen it myself but I am sure the individuals who been working on this would have seen that material because they have been in touch with the Victorians. If they had not had it directly from there, the advocacy groups would have brought it to their attention. We are looking at various options to try to increase our outreach to that particular segment of the electorate.

**The Hon. BEN FRANKLIN:** Mr Chair, do you want me to keep going or do you want to throw it open to some other people? I can keep going. It is entirely up to you.

**The CHAIR:** We may throw it open to the Committee if they have any questions that we can move forward with. Is there anyone else who would like to ask a question?

**The Hon. COURTNEY HOUSSOS:** I have a few questions, if you do not mind, Mr Chair.

**The CHAIR:** Sure.

**The Hon. COURTNEY HOUSSOS:** Thank you very much, Commissioner, and your team for your time again today. I want to ask some questions about unauthorised material and the policing of unauthorised material. Under section 186 of the Electoral Act, the person authorising the publication of a piece of material is required to put their name and address and, if it is printed, the details of the printer on it. If someone makes a complaint to the Electoral Commission about a piece of material that does not have the name and address of someone authorising it, what is your process for dealing with that?

**Mr SCHMIDT:** This happens in the heat of the election, of course. What we would normally do is we would ask the complainant to provide us with a copy of the material; presumably, in most circumstances they will have it because that is the nature of the matter that they are raising. We had at the last election some compliance teams who were out there in the field. If one of those teams was available, they could go and speak to individuals on the spot and record the events. It is very difficult in the time frame—that short period when the election is alive—to take formal compliance action. The endeavour is to try to get evidence, which can be used post the event to bring a prosecution if it is warranted.

But the normal approach first off—and this does seem to work in most occasions—is that people are contacted—the party or the individual who circulated the material. The general experience is that people do respond to that contact and either remove the material or take steps to put the appropriate authorisation on. I might just ask Rachel McCallum. Ms McCallum, do you have any further insights from the compliance perspective?

**Ms McCALLUM:** I think that is a good summary of the position during the election event, Mr Schmidt.

**The Hon. COURTNEY HOUSSOS:** Commissioner, You said you have some compliance teams who might be in the field. Do you have dedicated people who are charged with this or is it just a part of a general management of elections that goes on?

**Mr SCHMIDT:** Yes. We have our funding, disclosure and compliance area but we have put together—I think I will just call up, if I can—the information about that. Ms McCallum, can you talk to the activity we did at the time?

**Ms McCALLUM:** At the 2019 State election, that was the first time there was a dedicated compliance operation where our teams went into the field, so to speak. That was, as I said, the first time. We gave some evidence about that at the last hearing, I think, or the hearing before that. There is a dedicated compliance area of the Commission and a dedicated investigations team.

**The Hon. COURTNEY HOUSSOS:** Commissioner, can you tell me how many people are in that team? I am happy if you want to take it on notice.

**Mr SCHMIDT:** Yes, I think I will take that on notice.

**The Hon. COURTNEY HOUSSOS:** That is fine. You said most of them are resolved because it might be a misunderstanding of someone who did not know that they needed to do it. If it is a more serious breach, what then happens? Do you refer to the police for investigation? Do you collect the information yourselves? What is the process?

**Mr SCHMIDT:** We collect the information ourselves. There is a range of offences under the Electoral Act, which is published. We have our compliance guide, as it were, which indicates—as with any compliance regime of any organisation, you have a hierarchy of actions that you can take against people. As I alluded to earlier, you can start off with discussions, with warnings, penalty notices and work your way up from there. There is a suite of actions that can be taken in respect of individuals.

**The Hon. COURTNEY HOUSSOS:** Are you able to provide me perhaps on notice with a bit more of those particular steps—

**Mr SCHMIDT:** Yes.

**The Hon. COURTNEY HOUSSOS:** —and which ones of them are actually undertaken internally, like if the Electoral Commission actually issues the penalty notices or if that gets referred off?

**Mr SCHMIDT:** No, we actually issue them ourselves and we will initiate court action if it got to the other extreme of the spectrum. But, yes, we can provide you with the details of the compliance manual, which indicates in detail our approach.

**The Hon. COURTNEY HOUSSOS:** That would be really helpful. If you could perhaps also on notice tell me how many complaints you received for unauthorised material for the 2019 election, and if you have any comparative previous election data, that will also be useful.

**Mr SCHMIDT:** Ms McCallum, do you have anything?

**Ms McCALLUM:** I was just going to say that in response to questions taken on notice the last time, we did provide some data on that statistic. We had 179 allegations—not about electoral materials but generally—recorded, coming out of the 2019 election. The statistics are in the report, but looking at those, we have divided them up into the types of allegations: for instance, electoral material breaches such as you are referring to, but other offences that come up under our legislation, such as misconduct at voting centres—the six-metre rule that sort of thing—bribery, donations, and related offences. There is some information there that sets out the types of allegations that were investigated. That was at a point in time and I think we have said in our formal response that that was December and there were 11 matters still open at that point in time. The numbers have actually gone up a little bit because we have some more voting-related offences—failed-to-votes et cetera—since that time that have come into our statistics since December.

**The Hon. COURTNEY HOUSSOS:** Have any of those figures in relation to the question I am asking about in terms of unauthorised materials changed?

**Ms McCALLUM:** The material that we have provided to the Committee does not go to that level of detail but we will take that on notice and we can provide that.

**The Hon. COURTNEY HOUSSOS:** Yes, of course. That would be really helpful. In that information, do you say how many prosecutions you have commenced?

**Ms McCALLUM:** We do report that. We are required to do an annual report on our enforcement action. It will not be there yet in relation to the last election but we are required to publicly report on the enforcement activities of the Commission in a year—each year, not just in relation to an election.

**The Hon. COURTNEY HOUSSOS:** I will have a look at that. Commissioner, I wanted to come back to you because you talked about ads. Obviously it is very difficult. There is a very small time frame—not necessarily a small time frame—in which you can action these complaints. Are they treated differently if a complaint is made before voting closes or if after voting has closed?

**Mr SCHMIDT:** The vast majority of matters are raised before voting closes. People tend to not pursue it so much after the event. I do not know what the split would be on that. I do not draw a distinction in my mind. Obviously, our action would be different before or after because the circumstance in which we would be looking at it would have changed.

**The Hon. COURTNEY HOUSSOS:** Do you feel that you have adequate funding and powers to investigate these kinds of offences?

**Mr SCHMIDT:** It is an interesting issue. I will try to break it down into a couple of segments. We have powers. I am not aware of there being concerns about the scope and depth of those powers. Resourcing is the challenge because although we have compliance individuals on an ongoing basis within the organisation, you would have heard me talk previously about some of the funding for those people running out at the end of this financial year. We have been fortunate. We know we are in difficult financial circumstances due to COVID. As part of the current budget round, we have had a 12-month extension for some of our enforcement people and our budget situation. We will see what happens after we get through the COVID year. We have extended those people.

I was concerned when the local government election was going to be in September of this year. We could have had the unfortunate situation of not having ongoing funding for our compliance people there. We do have some people. We have had an extension of that funding. The challenge is how many people do you need during a major statewide election event. You cannot carry 100 people throughout the year for that work. We have explored the possibility of bringing in people from other agencies to train up and send out as part of the teams. That is something that we will continue to work on. The main concern that drives me with this has more to do with the actual delivery of the election.

I try to separate out that compliance function from the responsibilities on the polling place managers because there can be an expectation, if you do not have compliance people on the ground, that people would like to see intervention from the electoral staff at the particular venue if the incident has arisen in a venue. Their primary function is to deliver the election and they are flat out doing that as well. There can be a tension. We have had issues with the amount of resources. We have had some continuity given to us for the next 12 months and we are exploring options to be able to bring in people from other agencies to assist in future elections.

**The Hon. COURTNEY HOUSSOS:** Thank you very much. I have a couple of other brief questions on different matters. Are you able to provide us with the numbers of people—again, if you need to take that on notice, it is fine—who verified their vote through iVote in 2019?

**Mr SCHMIDT:** You will find those figures in the report. It was almost 50 per cent of electors who used the system and verified their votes. I am plucking the figure now. I think in the previous general election, it was approximately 1.7 per cent. There is a significant increase in people who verified their vote.

**The Hon. COURTNEY HOUSSOS:** Thank you very much, Commissioner. That is quite reassuring. I wanted to move on to the centralisation of the count. I did go and check out your incredible operation at Carriageworks after the election and the counting that was underway. Do you have any specific lessons or plans to refine that for 2023? Let me specifically raise one point, which was the question of seats where the voting is close. Obviously, with the centralisation, which does speed things up somewhat, there was still the approach that they were working through each seat, rather than necessarily prioritising those seats that are close. Is that something that you would consider in the future as you centralise it?

**Mr SCHMIDT:** I will throw to Mr Kwok in a moment but I might take this opportunity to talk about what I hope will be one of the major innovations, certainly for the upper House count. In 2023 we would like to move to full ballot scanning. We do not have ballot scanning in New South Wales yet; the Commonwealth has successfully used in a couple of Senate elections. I think ballot scanning will vastly improve the opportunity for scrutineering into the future. In a COVID world, it will address one of the great challenges we face at the moment, which is how do you actually have COVID compliance arrangements and still enable parties and candidates to have an appropriate engagement with the count process?

If I can continue for a moment, I am having regular hook-ups. I chair the Electoral Council of Australia and New Zealand, which consists of all the Australian Electoral Commissioners and the New Zealand Commissioner as well. We have had a couple of meetings in recent times and we will continue to discuss about what we are all collectively doing in a COVID world. One of the constant themes, of course, is how to put in place arrangements that will enable scrutineering to continue in a fashion. As I said, my hope is that ballot scanning will



enable much more engagement by scrutineers because we will have a copy of every single ballot paper that goes through the process and people will be able to sample it, pull out batches and do all sorts of things, which are just physically impossible at the moment. But back to where you started from, Mr Kwok would you like to talk about the lessons learnt and things we might do in relation to centralised counting?

**Mr KWOK:** Yes, certainly. Thanks, Mr Schmidt. The Carriageworks operations was the first time when we centralised the processing and counting of all our declaration votes. That has been a success for us because it has certainly reduced a large number of movement of ballot papers where we historically have been receiving ballot papers from one of our offices and forwarding to another. By centralising them, we have reduced a large number of movement. That has been a success. As with anything that we run for the first time, there is always room for improvements. I guess one of the things that we did find is that, as you pointed out, we have to make some decisions in terms of priorities. A large part of this is because of the space and the people that we have. At Carriageworks—and I do note that Carriageworks is currently under administration—finding suitable space that has the necessary infrastructure is a challenge for us.

We will be looking at, as Mr Schmidt mentioned, further automation through ballot paper scanning, for example. That will be an avenue of automation and provide a lot of opportunities for us to provide more information and more transparency in terms of making available the data and information to the scrutineers, where they have very important roles. We would be looking at, I think, more transparency as far as processes going forward, in terms of providing the necessary stakeholders, in terms of the processes where we are counting at and the locations, and in terms of operations-wise, what counting operations and which districts in which they are conducting and providing the information in a more real-time manner. But something that I guess we will have to look at going forward is suitable venues and suitable size of the operations that will sustain a large number of people and infrastructure.

That is certainly something we are able to look at. In the lead-up to the State elections in 2023, we will provide more information about the improvement that we are planning to make. Some of those have some dependencies, such as whether we would be able to implement things like LC ballot paper scanning. That is an important part of the innovations and improvement that we make. We will certainly provide the information in the lead-up to the next election.

**The Hon. COURTNEY HOUSSOS:** I will offer a suggestion. I did visit Carriageworks and Rosehill and both of them were very impressive operations. I think a move to scanning would be a good one. I guess the only thing that I would say is that particularly at Carriageworks, when we are looking at declaration votes in specific seats—and it is no secret; everybody knows the seats that we are watching. As we start counting, if you just, in some way, prioritise those, that is the only thing that I thought started to slow down the counting instead of speeding it up. I have one final question, which was the decision to start to delineate between first-preference or single-preference and multi-preference votes and to see where that came from because that was obviously the first time that that had occurred in the counting.

**Mr SCHMIDT:** Mr Kwok, could you talk to that?

**Mr KWOK:** I have to say that in relation to the counting for the lower House, the Legislative Assembly, ballot paper, we have not really changed the way we run the count. On the election night, we always have reported on the first preference to the candidates. That process has not changed. Perhaps some of the comments that were made were in relation to how we conducted the two-candidate preferred [TCP] voting. We do obviously [inaudible]—again, that process has been ongoing for quite some time. It certainly is not something new in this election, where we do isolate the first preference votes with the [inaudible] in the TCP count and then we run the TCP against the nominated candidate, where there is more than one preference. The process really has not changed. Also, in terms of the check count, our data entry process has not changed in terms of the single or multi-preference. We data-enter every preference on the ballot paper into our systems. We do not really isolate it, other than to sort them so that they can be added more easily. I just want to make that clarification.

**The Hon. COURTNEY HOUSSOS:** With respect, Mr Kwok, we did find that our—

**The CHAIR:** Mr Kwok, we missed most of that because it was breaking up. Would you be able to turn your camera off so the stream picks up just your voice? Could you repeat what you said because we have missed most of it?

**Mr KWOK:** My apologies. It is the audio a little bit better now?

**The CHAIR:** Excellent. Thank you. Could you repeat everything? It was interrupted all the way through.

**Mr KWOK:** My apologies again. I just wanted to point out that our counting process really has not changed from our previous election. On the election night, we count and report on first preference to the candidate

as we always have done for all the polling places. The same process applies for pre-poll and also for the poll for ballot papers for initial count. For the check count process, we data-enter every preference for our lower House or LA ballot papers into our system. That process really has not changed. Perhaps where there is a point about single-preference or multi-preference, perhaps it may be in relation to two-candidate preferred count on election night in the polling places, where we do sort single preference ballot papers by the candidate to simplify the TCP count. But again, I point out that that process really has not changed from the previous election. I just want to make that clarification.

**The Hon. COURTNEY HOUSSOS:** The point that I was going to make is that, with respect, we found from a party perspective and from a candidate perspective that it did change significantly at this election. The instructions and the way that it was being carried out was obviously to make it easier for the data to be electronically entered. I understand that in one sense. But again that did delay in some ways the two-candidate preferred count. So I just suggest that obviously once you get to the point of the data entering—that needs to be sorted in a particular way—but I will just again emphasise the importance of counting and allowing that second-preference count to be quite visible and counted out for individual candidates.

**Mr SCHMIDT:** What we might do to address this issue is obviously in the lead-up to the State general [SG] elections 2023, we will be having engagement with the parties and candidates about a whole range of issues and we might do a more detailed walk-through or an explanation of how we are going to carry out the counts. We can do that at some period in advance of the event itself and see if there are any challenges, changes or issues that people want to explore in more detail.

**The Hon. COURTNEY HOUSSOS:** Thanks very much, Commissioner. Thank you, Mr Chair. Again, I am getting right down into the weeds of the election process. I appreciate that. Those are all my questions for now.

**The Hon. BEN FRANKLIN:** While we are on the election count, can I ask one question please?

**The CHAIR:** Certainly.

**The Hon. BEN FRANKLIN:** You would have seen, Commissioner, that we have had a number of suggestions and discussions about starting to count the pre-poll votes before 6.00 p.m., the view being that that then speeds up the result that night. I guess my question is how you feel about that. Do you think that your staff would be in a position to be able to logistically make that happen, or is this something that would be so onerous that there is no point in us even considering it?

**Mr SCHMIDT:** Thank you, Mr Franklin. I have been thinking about this because of it being raised on a few occasions. I do not support it. If COVID, which I will come to, adds an extra complication to it, as it does with almost everything that we do—the security requirements and the need to have secure premises, where people are locked away with all the equipment taken away from them; any suggestion of information getting out to the community while they are still voting about potential trends in voting patterns—all of it could form a basis for a challenge to a close election after the event. It also goes against, in a way, some of the other developments. We had that issue about the Legislative Council count on the night and some criticism of only having a limited count and the speed with which we did some of that, and that was, of course, in response to a work health and safety issue about historically people have been working well past midnight at election centres.

That cannot be tolerated anymore under the work health and safety legislation and we have been trying to develop systems whereby the count ceases about 10.30 and we get people out the door by 11. This would be an added complication to that. In a COVID world what do you do? You are having people sealed into a place for a long period of time—to what end? Important as the election results are, for the added benefit of having a bit more speed on the night to get results out so that people are able to call the result—if it is not a close election it is not such an issue—I am just not persuaded that that is the path to go down. It is ultimately a matter for the Parliament. If Parliament requires that to be done of course we will take measures to do it, but my view is it is something that I would not personally be pursuing at the moment.

**The Hon. PETER PRIMROSE:** Chair, may I ask a question?

**The CHAIR:** Certainly, Mr Primrose.

**The Hon. PETER PRIMROSE:** Just one question, Commissioner, that arose from the evidence that we received from the Victorian Committee and it related to an amendment that they have put through recently to their electoral legislation. The concern relates to postal voting. We have similar experiences here, and I presume other jurisdictions, that people who respond to a political party putting out postal vote applications believe that they are putting the application in to yourselves as the Commission, but in fact they are making the application to a political party. That has now been overcome by an amendment to the Victorian Act that requires all applications

received to then be made available to all political parties and independents. I was wondering if you have any comments on that matter?

**Mr SCHMIDT:** Mr Primrose, you broke up just towards the end. Could you just briefly describe again how the provision works?

**The Hon. PETER PRIMROSE:** I will turn my video off, which may help for all sorts of reasons. Is that clearer now?

**Mr SCHMIDT:** Yes, that is clearer for me.

**The Hon. PETER PRIMROSE:** Very briefly, I had said that in relation to the Victorian Committee they mentioned that one of the amendments that has recently gone through the Victorian Parliament related to postal voting. They, like other jurisdictions, have experienced people complaining that when they filled in a postal vote application they subsequently had found that it had been received from a political party. That application then had gone back to the political party and then was given to the Electoral Commission to process and people had then subsequently complained because they had thought it was going directly to the Commission. So the amendment that they have put through to their legislation relates to once any application is received from anyone, that those details about who has made an application is then made available by the Victorian Electoral Commission to all political parties and independents. I was wondering if you have any comment on that amendment to their electoral legislation and whether you believe that is an issue in New South Wales.

**Mr SCHMIDT:** It is an interesting provision, I must confess. When you first were describing it I expected the amendment would have required the applications, if it is addressing concerns that people had about privacy, that the postal application would have been sent directly back to the Commission rather through the hands of an individual party. If this issue, and I do not know the history to the amendment in Victoria, but if the issue is that people are concerned that their details and the channel which they are proposing to cast a vote is being raised with a party, I would have thought that those concerns would be amplified if those same details—if I have understood the operation of the amendment—were shared with all parties. So it strikes me, coming to this very cold, that it is an interesting proposal.

**The CHAIR:** Members, any other questions? I will come back to you, Mr Franklin.

**The Hon. BEN FRANKLIN:** I am happy to have another crack, Mr Chair. Commissioner, picking up on one of Ms Houssos' points about authorisation on material, again there has been significant discussion in evidence about social media authorisation and a question about how you would feel about rather than individual Facebook, for example, posts or Instagram posts being authorised, each one of them, rather than that authorisation is carried on the actual site itself—so a person's individual or a party or a candidate's individual Facebook site or Instagram site—rather than on every single post. I was wondering if you had any comments about that.

**Mr SCHMIDT:** Yes, it is an interesting issue, and this was the first election, in a New South Wales State election, where the new Act now encompasses social media. I will pass to Ms McCallum in a minute, because my understanding is we did, in trying to grapple with authorisation—and if you are talking about SMSs and even more small datasets, an authorisation would be longer than the message—so in that case, if I recall correctly, and we put out guidance on this, you could have a link to a site which set out all the appropriate authorised details and we again indicated that through websites it may well be that so long as the authorisation was clear on the home page that that would suffice in some circumstances. But, Ms McCallum, can you perhaps expand upon that?

**Ms McCALLUM:** That is the general gist of it. We did put out some explanatory material prior to the election to try to assist participants to deal with the fairly late-in-the-piece changes to the regulations. So I suppose what the rules are is a policy matter for government and the Parliament. So in that sense the lens we would put on to it is the practicality with which it can be enforced and, going to Ms Houssos' point earlier about the resources available to us in terms of monitoring social media for infringements of, say, electoral material rules, that would be a concern to us. I suppose it really is a practical matter to start with where the authorisation should be, and that is a policy question about what is the policy purpose of the authorisation in terms of making sure that people, say, through sharing images and what have you, are understanding the origins of the material, and I am sure that as technology changes there will be different ways in which one would approach that as well.

So we tried to provide some guidance. Before the next State election and possibly before the next local government election there is more work to be done to refine our thinking about how to approach it from an enforcement perspective, but I would say how it should be authorised is probably a policy and a technology practicality question for government or Parliament, depending on whether it is in the regulations or the Act.

**The Hon. BEN FRANKLIN:** Thank you. If you do have any further thoughts on either that issue or, indeed, the compliance issues, which are quite substantial, or the issue that has come up about needing to account

for each single post when you are putting in your electoral funding returns, in this whole space I think there is more work that needs to be done and I guess the point that I am making is we would welcome any further thoughts that you have in all of those areas about that after our consideration.

**Ms McCALLUM:** Thank you. I am happy to check.

**The Hon. BEN FRANKLIN:** Thanks, Ms McCallum, I appreciate that. Chair, I have got a couple of final issues to ask, if that is all right.

**The CHAIR:** Sure.

**The Hon. BEN FRANKLIN:** It is just about the administration funding side of things. Commissioner, apologies, I just cannot remember if I raised this last time or not, but I know this is of interest to a number of parties, so I just wanted to quickly raise the issues again. It is about the party administration funding. Two questions: first, what your views would be about it being done on an annualised basis rather than needing to account for each three months, because obviously, as a number of parties have suggested, there are some months or quarters where there is less spending and it potentially will go under that quarter of the year's allowance and there are some that will be higher. So it seems to be rather than forcing a party to spend up to a particular cap, if they can make an allowance across the entire year so that some might be less and some might be more but it ends up at the same rate, that might be a fairer way to do it. I was just wondering if you have any comments about that.

**Mr SCHMIDT:** Ms McCallum, do you want to dive into this one?

**Ms McCALLUM:** Probably not the fairness aspect of that, Mr Franklin.

**The Hon. BEN FRANKLIN:** No, no, of course. But in terms of the logistical issues and how that would work for you.

**Ms McCALLUM:** Obviously, we would administer the funding laws as they may be set by Parliament. What I will do is take that on notice in part, to specific administrative barriers that might throw up for us in processing annual claims, but, generally speaking with the quarterly claims, my understanding is we administer that because that is the way the Act is written at this time. It does lead to some claimants not spending everything to which they are entitled, as you say, in a quarter. If it was an annualised amount obviously that is going to be a larger amount and it may throw up interesting record-keeping and maybe some more challenges for the Commission in terms of us seeking to ensure that the amounts were legitimately incurred during the course of a longer period of time. So that is one thing that occurs to me that might be more challenging from an administrative perspective.

**The Hon. BEN FRANKLIN:** I am not suggesting that we go to one return per year; I am still keeping quarterly returns. It is just that rather than needing to spend a quarter of the amount that we are allocated each quarter, when you add up all four quarters it adds up to the total amount that you are allowed to through an entire year.

**Ms McCALLUM:** I might take that on notice, whether that raises a specific administrative issue for us.

**The Hon. BEN FRANKLIN:** I cannot see that it would particularly, but obviously your comments would be very welcome. The final question is to you, Ms McCallum, on a similar thing. Particularly for smaller parties—I know the Shooters have raised this and some independents—the potential for administration funding being paid all up-front for what they would be entitled to and then if they did not get it, if they did not hit that mark they would then have to return it. But that would allow, particularly parties like the Shooters, to deal with their cash-flow issues better and so forth. Do you have a comment about that?

**Ms McCALLUM:** I do not think I have a comment. We administer the scheme as it is provided in the legislation.

**The Hon. ROBERT BORSAK:** That is actually how it is done in Victoria: all the money is paid up-front.

**Mr SCHMIDT:** If the legislation required or provided for that, that is exactly what we would do.

**The Hon. ROBERT BORSAK:** Would it be easier for the Commission to administer it in that fashion?

**Mr SCHMIDT:** I do not know whether it would make a huge difference administratively, but easier or harder, if that is what it required we would do it.

**The Hon. BEN FRANKLIN:** That is all I have, Mr Chair.

**The CHAIR:** Just a question from submission No. 27. The Committee has received submission No. 27 raising concerns regarding declaration forms required to be submitted to the NSW Electoral Commission to claim

moneys from the new parties fund for policy development expenditure. What is your response to the concerns raised in submission No. 27?

**Mr SCHMIDT:** This was from Mr Hindmarsh, I think. Is that correct?

**The CHAIR:** Correct.

**Mr SCHMIDT:** I think the issue there was whether it should move from a calendar year to a financial year. Ms McCallum will correct me if I am wrong, but it may make it longer for people to actually make the claim because at the moment if they have incurred the expenditure up to the end of the calendar year but if it moved to the end of the financial year, so they have to wait for that annual accounting to be done, there may be a longer period before they can actually get those funds. So it may work against parties who are seeking it. But, Ms McCallum, do you want to add anything to that?

**Ms McCALLUM:** That was my understanding of the submission, that it is suggesting that things be calculated on a financial year. The Act provides for it to be done on a calendar year. Probably there would be policy reasons about money being available to parties close to when they have spent it, as close as possible in relation to that decision, but if the decision was made to change it to a financial year I just think it would be useful to consider what impact that would actually have on the money being available to the very small number of parties that are entitled and/or claim from the fund.

**The CHAIR:** Thank you. Any other questions from the Committee? Thank you very much. If there are no more questions, I thank you all for appearing before the Committee today. The Committee may wish to send you some additional questions in writing, the replies to which will form part of the evidence that will be made public. Would you be happy to provide written replies to any further questions?

**Mr SCHMIDT:** Certainly.

**The CHAIR:** Thank you very much. That concludes the public hearing today. I place on the record my thanks to all the witnesses who appeared here today. In addition, I would like to thank the Committee members and Committee staff, Hansard and our IT specialists for keeping us on board today and for their assistance in conducting this hearing. I thank one and all and I hope you have a lovely rest of the day.

**(The witnesses withdrew.)**

**The Committee adjourned at 11:09.**