

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, 12 August 2016

The Committee met at 9:00 am

PRESENT

Mr J Rowell (Chair)

The Hon. R Borsak

The Hon. B Franklin

The Hon. C Houssos

The Hon. Dr P Phelps

The Hon. P Primrose

Mr M Taylor

Mr A Crouch

The CHAIR: Good morning and thank you for attending the Joint Standing Committee on Electoral Matters. 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 and I welcome attendees in the public gallery. I draw attention to the media guidelines that are available and declare the hearing open.

KAILA MURNAIN, General Secretary, Labor NSW, affirmed and examined

The CHAIR: Do you have any questions in relation to procedure or any information sent to you?

Ms MURNAIN: No.

The CHAIR: In what capacity do you appear before us today?

Ms MURNAIN: I am the General Secretary of the Labor Party in New South Wales.

The CHAIR: Would you like to make an opening statement?

Ms MURNAIN: I would. Thank you to the Chair and the Committee for allowing me to appear before you today. The State election obviously being quite a long time ago now, I appreciate the opportunity to draw the Committee's attention to some of the items in the submission that we submitted last year. Early voting is something I want to draw to the attention of Committee members, particularly the iVote system. Our concerns about the integrity of the system and this method of voting in the future is to ensure that there are continuous improvements to technology and more opportunities for political parties such as mine to scrutinise the material and data entered into the processes.

Furthermore, the system collects the email addresses and mobile phone numbers of people who are willing to vote. That data is not automatically passed on to political parties and that is something I am interested in as the General Secretary of the Labor Party to explore the full opportunities of our democracy and ensure that our candidates have an opportunity to contact people who vote via iVote. They will have the opportunity to contact those who register via this system. In addition, there is an issue with the order of the ballot on the online system. I know there has been quite a bit of discussion in the hearings to date about this. The Labor Party recommended that when a user logs on to the system the fact that they were on one side of the ballot had an impact on the vote.

Antony Green's blog goes into this in detail and it is something we had concerns about, being a party drawn at the end of the ballot paper. At the next election, if iVote is to continue, we would ask for scrutiny over the processes of data collection before the ballot opens. Furthermore, that a system be implemented that allows the user to jump onto the ballot at a randomised spot on the paper. We would not support the randomisation of the columns because that makes the how-to-vote system difficult, but when users go onto the system they land on a ballot on different spots and that is randomised through the online system. We should also have the opportunity as a political party to display our how-to-votes through the iVote system.

The Labor Party believes that we should have opportunities to teach people how to vote formally, not informally, and that we have the opportunity to allow our how-to-votes to be on the online system so people can see what our how-to-vote ticket is. It is difficult to communicate with people if they are not walking into a ballot box. I have some general comments relating to compliance and complaints about compliance during the election. We had grave concerns about the breaches of the Act in the New South Wales State seat of East Hills. I will not go into that further today because it is currently being looked at. I would like to congratulate the Electoral Commission for taking action in this respect. It is important that we keep the integrity of our elections to the highest calibre and order.

With our culturally and linguistically diverse communities, the Labor Party is committed to ensuring those communities are communicated with and that they understand their obligations under the Act in regard to voting. We know that the Electoral Commission acted swiftly to resolve issues in ballots in different booths in the lead-up to the election where there were a large number of non-English speaking background residents. Those people who had significant cultural and linguistically diverse communities at this election, we know that they made significant steps to recruit staff, but we would like to see more work in this space. There were significant problems leading into the election with large population growth centres and more people unable to communicate in English. We want to make sure that the Electoral Commission take further steps to ensure it hires staff that speak a variety of languages.

I conclude by saying that the payment of workers on polling booths is something that we are still getting complaints about to this day. We have grave concerns about other parties entering the race, like the No Land Tax Party. The work that was undertaken by political parties across the spectrum was admirable, except the No Land Tax Party where workers are yet to be paid for the work they did on Election Day. The misleading information that went to them is of grave concern. Appropriate rules must be implemented to prevent it happening again. I note that the Fair Work Commission is looking at this issue. I implore the Committee to develop a system to enable action against parties such as the No Land Tax Party for the lack of payment for workers. It is quite disgraceful. We continue to receive reports sent to us of workers yet to be paid. I would like

to note that on record. I know the Committee is full of very intelligent people who can come up with fantastic solutions to these issues. I ask you to look at that issue in depth over the course of the hearings.

The CHAIR: Everyone is talking about electronic voting. Would you support, with some significant safeguards in place, a trial of electronic voting in polling booths on Election Day with all the checks and balances?

Ms MURNAIN: Our Federal Opposition leader Bill Shorten spoke about this in the days after the election. There are merit arguments to a system that decreases the informality voting at every election. We have a wonderfully diverse community in this State and there are significant issues, particularly with the Federal ballot, with the informal vote. It is sad to see the informal vote get above 15 or 20 per cent in some booths in this State. Any method that we introduce to try to decrease the levels of informal voting the Labor Party would fully support. However, that being said, with new technology there are always bugs to the system, as we saw in the census, and we have to put the appropriate safeguards in place.

I encourage the Committee to look at options such as this. There is no silver bullet to fix the issue of informal voting, but any act to remedy that problem we would support. That being said, we did have very significant concerns about iVote and the 20,000 votes that were cast before the issue with the upper House ballot paper was rectified. We have continuing concerns about that system and our party's complete lack of ability to scrutinise it. If such systems were introduced, our party would want to see a thorough scrutinisation process.

The Hon. Dr PETER PHELPS: A number of people have spoken about the potential for iVoting, but have insisted there be an ability to cast an informal vote even through an electronic system. Do I understand that the Labor Party's position would be that if we move to that system the ability to cast informally would not be permitted?

Ms MURNAIN: Correct.

The CHAIR: I refer to the Legislative Council tablecloth ballot paper getting bigger and bigger. Would you recommend any changes to the Committee to deal with that issue?

Ms MURNAIN: I encourage the involvement of any party in the democratic process. It is a difficult issue because the ballot paper is getting quite large. The processes in place with regard to registering a political party are very stringent and it was very difficult for those of us who have had to do it in past; it takes a long time. The processes we go through to register as a party are very strict. Democracy is a wonderful thing and any move to restrict political parties' ability to participate would be a mistake. However, the large use of paper at the last election was certainly a concern. However, our party does not believe we should do anything to restrict participation in the political process. That being said, I again note the disgraceful behaviour of the No Land Tax Party and encourage the Committee to consider ways to stop anything like that ever happening again.

The Hon. ROBERT BORSAK: You cover the iVote system extensively in your submission, and you recommend its continuation. The Committee received some academic papers and recommendations that it not be continued, certainly not in its current form, not over the internet and so on. I also note your second recommendation, which supports the randomisation of the process. In light of what is happening with the Australian Bureau of Statistics at the moment, has the Labor Party applied its mind to how the system should be delivered? The Chair was alluding to some approach that would work within a confined polling place, perhaps with networking rather than the system used last time.

Ms MURNAIN: There are many experts in this field in terms of opportunities to innovate in voting, and I know you have heard from some of them in the past week. I will not pretend to be an expert on every technological opportunity available to allow people to vote formally or to improve our voting mechanisms. However, any move to reduce the amount of informality should be investigated because it is something that continues to occur, and we must ensure that people are able to exercise a valid vote if they so wish. This is a very intelligent Committee and we would ask for more scrutiny of any of those processes. I have great faith in the Committee coming up with some wonderful solutions to that problem.

The Hon. ROBERT BORSAK: It may be that the wonderful solution is to kill iVote, but that is a matter for further discussion. You talked about the No Land Tax Party and what it got up to, especially not paying its workers. The Committee has heard evidence about that in the past. Do you have a view about what should happen or how the Committee should deal with the officers of parties such as the No Land Tax Party, which I would call a pop-up party?

Ms MURNAIN: The mistrust that the Australian people have in the political system is only made worse by the actions of the No Land Tax Party. The Electoral Commission should have the power at some point to ensure that it can take action where appropriate against a party such as the No Land Tax Party, which has so

blatantly disregarded Federal and State legislation in relation to paying workers. We should have regulations that ensure they are correctly disclosed, which we have in New South Wales. Our payment procedures and the electoral funding laws are very strict in that respect; we are required to make payments to workers and staff. Action should be taken against such a party in relation to the things it did at the election. There should be a process, not an automatic right, that the commission can follow to withdraw a party's opportunity to run in future elections.

The Hon. ROBERT BORSAK: I think that is right, and the officers should not be officers of the party. Do you agree with that?

Ms MURNAIN: That the officers of a party—

The Hon. ROBERT BORSAK: Such as the No Land Tax Party. Should they be barred from the political process for some period?

Ms MURNAIN: The commission should have the opportunity to take much tougher action than can be taken now. I have not put much thought into the penalties, but the Labor Party would be open to more discussion with this Committee about that issue.

The Hon. ROBERT BORSAK: Perhaps "penalties" is the wrong word. Would you consider or be interested in a discussion about public officers of the parties being personally liable for the debts to workers, advertising companies and so on?

Ms MURNAIN: We had discussions about the liability, role and governance of political parties at the committee hearing I attended about a year ago as the assistant general secretary of the party. We discussed the law around the governance of parties and who is responsible for what. I have said it before, and I say it again: we must ensure that we create a process that allows parties to structure their organisations as they see fit while not being too prescriptive but also ensuring that people who run political parties are responsible for their actions. In terms of legislation or regulation governing that, again I am open to more discussions with the legislators—this Committee—about what we might be able to do to ensure that those people are held responsible. In terms of issues around liability, I think I covered that in our previous session.

The Hon. ROBERT BORSAK: Australian Corporations Law provides for directors who are officers to be liable for the debts of the business or the company if they knowingly trade from an insolvency position. Do you have any views about how that might operate in this scenario?

Ms MURNAIN: The bigger issue here is that every political party operates differently. There are incorporated associations, unincorporated associations and so on. Every party is structured differently.

The Hon. ROBERT BORSAK: I am talking about going through the corporate veil. It does not matter what it is, the corporate veil might be a disguise. Insolvency and Corporations Law goes through that veil and talks to the individual. In other words, if you are a director or an officer of the company and you knowingly incur a debt fully expecting not to be able to pay it, you should be held liable for that debt.

Ms MURNAIN: Ultimately, the leaders of the political parties are responsible for the impact of their own decisions. Anyone who has run a political party understands that ultimately we are responsible. In terms of the No Land Tax Party, it is clear to me that they feel they are not responsible. Someone must hold them accountable. My suggestion is that the Electoral Commission be given more ability and room to move in terms of holding the party and its leadership to account in this respect. The Labor Party is open to discussing mechanisms to ensure that.

The Hon. ROBERT BORSAK: Your recommendation 3.2 refers to cultural and linguistically diverse communities. Did any of your booth workers experience any particular difficulties with language issues?

Ms MURNAIN: Yes. In terms of our experiences in the lead-up to the election and on election day, there is obviously quite a lot of change going on in Sydney—new developments; communities moving into different areas of the city, particularly around Strathfield; issues around Green Square, Waterloo and Alexandria; and large communities, particularly those of non-English speaking backgrounds, coming into booths to vote in large numbers not expected by the commission based on previous experience because of the large amount of development going on in the city. In terms of dealing with these issues it is very difficult—particularly when the census is not working—to make sure that we respond to the data that is coming in to political parties. It is very important for the commission to be able to respond to these issues quickly and swiftly.

We made a number of recommendations to the commission during the process and during the election last year to ensure that they had in particular Mandarin speakers and Cantonese speakers in seats such as

Strathfield where there were significant issues outside the pre-polling booth and on election day in relation to long lines of people and people not understanding their obligations or their opportunities to vote. We requested that the commission send people who could speak those languages to those particular booths. They did act swiftly. They acted within two days and ensured they had sent people out. However, I believe more planning needs to be done.

We cannot just rely on the forecasted population growth centres that continue to be released by the Australian Bureau of Statistics [ABS]. We know—and we found out through the pre-poll booths—that there are a large number of Chinese voters in particular voting in Strathfield. That is something they should have been able to prepare for without us putting in the request. That being said, we thank the commission for responding quite quickly, but there were significant issues on Election Day with people in that particular community not understanding their obligations to vote.

The Hon. COURTNEY HOUSSOS: Following on from that point and given that we are in dealing with what has just happened with the census, would you then say that political parties are perhaps better positioned to provide advice directly to the Electoral Commission to anticipate these issues rather than necessarily just waiting for the day or even waiting until pre-poll voting opens for these problems to arise?

Ms MURNAIN: Absolutely. There needs to be a mechanism introduced that allows us to have that feedback. At the moment political parties are simply asked whether we support the location of a pre-poll booth. It does not necessarily list the language spoken by the people working on that booth. If we had the opportunity and were given a list of the opportunities for people to speak other languages in terms of the staffing of those booths I think that would be a very good development for political parties. Our candidates are in the field up to two years in advance and our elected members of Parliament know their communities, so they know where these challenges exist. The wonderful thing about multicultural Sydney is that we have lots of these communities and it is growing. We need to make sure we can prepare for that. The Labor Party would welcome a process whereby political parties receive not only a list of pre-poll locations and booth locations but also the language spoken by the official in those booths.

The Hon. COURTNEY HOUSSOS: Do you think that should extend to polling day as well?

Ms MURNAIN: Absolutely.

The Hon. ROBERT BORSAK: Getting back to iVote again, in your submission point 1.1.2 talks about human error. I realise that the issue of the two boxes not appearing has been dealt with, and that is a point well made, but your recommendation talks about scrutinising the iVote system online before the system launches. How would you see that working?

Ms MURNAIN: Simply by allowing our scrutineers to go to the Electoral Commission prior to the vote opening so that we can see the system online. Some votes should get cast through a variety of different mechanisms—you would not be able to do every permutation of a vote, unfortunately, but at least as many as possible so that political parties can see the iVote system before it launches. One of our biggest issues was that we were not notified of this issue until two days into the vote, which you are all aware of. That would have been stopped if we had been allowed to see the vote and the system prior to its launch, and we were not able to do that.

The Hon. ROBERT BORSAK: You alluded to something when you said, "We could not possibly test every permutation." You do not know what you do not know. That came out in evidence before us last week. What level of scrutinisation would you be interested in pursuing? Would you go to the point of hiring academic experts to check the software? We have received evidence to the effect that the software itself, even at the most base levels under certain conditions and certain permutations, does not work.

Ms MURNAIN: We would be open to suggestions of that nature. I understand that a number of experts have appeared before you and I am very interested to see what their transcripts said about their recommendations.

The Hon. ROBERT BORSAK: I recommend that you read it.

The Hon. Dr PETER PHELPS: It is not up yet.

Ms MURNAIN: I have read some of their submissions but they are not very detailed in terms of the processes that they would implement. I would be very open to something of that nature. Certainly at the very least our party should have been able to appoint a scrutineer before the voting opened to have a look. At a very basic level, anyone who jumped on the system before the voting opened would have seen that a box was missing above the line. Frankly, that was unacceptable. So at the next election, at the very least, political parties should

be able to look at the system the day before or a few days before—scroll through the system and have a look and see whether it was working.

The Hon. ROBERT BORSAK: Do you have any views as to how you could scrutinise the iVote system during the count?

Ms MURNAIN: That is a very good question. We sent people out to the count for that purpose and it was simply in a computer so it was very difficult unless you had someone of a technical—

The Hon. Dr PETER PHELPS: They did not open up the computer and show everyone?

Ms MURNAIN: No.

The Hon. COURTNEY HOUSSOS: But that would be useful. Can you explain what they did? Everyone knows what appointing a scrutineer is—

The Hon. ROBERT BORSAK: That is my point. I am not trying to be flippant about it.

Ms MURNAIN: It was very difficult and I am very open to discussions from the technical experts.

The Hon. Dr PETER PHELPS: But scrutineering is futility in that instance because you observe the pressing of a button.

The Hon. ROBERT BORSAK: That is the answer I was trying to get out of the witness.

The CHAIR: Order! We will stick to questions, please.

Ms MURNAIN: Dr Phelps is correct—it is almost futile in that respect. But I would be very open to experts having the opportunity to have a look at the system and the process, and the back end, if you will, of the system.

The Hon. COURTNEY HOUSSOS: I have one quick question following on from the recommendation the Hon. Robert Borsak was just talking about, which is the opportunity to scrutinise the iVote system prior to the vote. So political parties, just like the general public, were kept in the dark until the system went up. Is that correct?

Ms MURNAIN: Yes.

The Hon. COURTNEY HOUSSOS: So you had no opportunity to see it beforehand?

Ms MURNAIN: That is correct—despite asking, I might add. I asked.

The Hon. PETER PRIMROSE: I share the concerns about iVote but I have another issue. I know there are dissertations on what is and what is not a number seven and actual rules, but not in relation to issues to do with iVote.

Ms MURNAIN: Yes. I have become all too familiar with that.

The Hon. PETER PRIMROSE: That is another issue. In relation to point 3.4 in your submission, restrictions on voting, you quote Antony Green as saying, "Voter ID is an answer trying to find a problem." I was wondering whether you could add to that.

Ms MURNAIN: As you can tell, I have quoted him a number of times in my submission. I am a bit of a fan.

The CHAIR: As we all are.

Ms MURNAIN: Excellent. The previous Newman Government in Queensland attempted to introduce this requirement for people to prove their identity. As we all know, in the United States there is a constant battle between States as to what level of identification you provide at the point of voting. From our view the question is: What is the problem that we are trying to solve? Where are the examples of mass multiple voting that have occurred to justify the requirement for identification? We must keep in mind that in this State there are people—a large proportion of people—who do not have a driver licence, for example, such as people in nursing homes. There are people, particularly elderly voters, who are not able to find their birth certificates. We often struggle with this issue in our party when we have ballots and things of that nature.

As a result of this substantial numbers of people would risk being disenfranchised by being forced to show an ID card. What happens when they show up and they do not have their ID? Are they turned away? Are they told that they do not get the opportunity to vote? Are they told to go home five minutes before the close of the ballot at 6.00 p.m. to get their identification? That will disenfranchise voters. Participation is something that the Labor Party has always supported. That is why we love compulsory voting. It ensures that people from all

walks of life get to have their say. Identification would be a barrier to that. As everyone knows, when you go to vote you have to give your name and your exact address. I would like to see what the problem is before we start finding a solution to a problem that as far as I can tell does not exist.

The Hon. PETER PRIMROSE: Following on from that, you raised the issue of community languages. Do you imagine that it would be quite complex having a discussion in a community language about the issue of the validity or otherwise and provenance of voter ID with a polling clerk who could not speak the language of the person with whom they were having this discussion?

Ms MURNAIN: Thank you very much for that question, Mr Primrose.

The Hon. PETER PRIMROSE: I did not want to lead you.

Ms MURNAIN: I endorse everything that the Hon. Peter Primrose just said. Again, going back to the multicultural and wonderful nature of this State, we have people from all walks of life in this State who vote in every election. The Labor Party would actively oppose any mechanism that would seek to make their lives harder in respect of producing a valid vote in an election. Everyone deserves that opportunity; it is their democratic right.

The Hon. PETER PRIMROSE: My final question on this point is: Do you believe that such an imposition would particularly adversely affect members of the Indigenous community?

Ms MURNAIN: Yes, ditto.

The CHAIR: Thank you very much, Mr Primrose, for raising that issue relating to photo ID, which jogged my memory. If a system for photo ID occurred, what checks and balances could you put in that would make your party comfortable with having a photo ID system? Would it be that if you do not have your photo ID you have to sign a statutory declaration, or are there other systems in place?

The Hon. BEN FRANKLIN: Or vouching.

Ms MURNAIN: We would oppose any move to force voters to show their ID.

The Hon. Dr PETER PHELPS: I wish to follow up on what the Hon. Peter Primrose asked. To make it clear, in your answer you seemed to indicate that the Labor Party requires the production of identification for its own internal party ballots. Is that correct?

Ms MURNAIN: No, that is not correct.

The Hon. Dr PETER PHELPS: I am not sure what you meant when you said that you have your own problems with the production of ID for people with your internal party—

Ms MURNAIN: We constantly have this debate in our party about enfranchising voters and allowing them to vote in ballots. It is a constant conversation that we are having as a political party but also in relation to general elections. We just fought the fight on this in Queensland and we would actively oppose it in New South Wales. I should go back to the question from Dr Phelps. There was a question whether voters should be forced to vote formally. We want a system where people can vote formally but if they actively decide to vote informally, that would be a choice they would also make. The system we want to introduce—and we have been very clear with our public policy on this at a Federal level when Mr Shorten came out with the announcement the day after the Federal election—is that we want to reduce the informality rate for those people who want to vote formally. That is the system we want to introduce. We are not recommending that if someone wanted to actively put in a blank ballot paper that their vote somehow could not be cast.

The Hon. Dr PETER PHELPS: On that point, how do you construct an electronic voting system—I agree you can do that, and I am a big fan of paper, pens and pencils.

Ms MURNAIN: I can tell.

The Hon. Dr PETER PHELPS: How do you construct an electronic voting system that by its very nature will require you to fill in a certain number of boxes for it to be officially lodged without being able to determine that this person is deliberately doing an informal vote and this person is unintentionally doing an informal vote because they are confused about the voting processes? My argument would be that there is no way you can create a system that would allow that to happen.

Ms MURNAIN: Some of your academics have pointed out ways that this might happen. I will not go into the detail here but some of them have suggested ways that that might in fact happen at the polling booth. There are mechanisms for that. It allows voters to be warned when they are submitting an informal vote and it allows them to fix that on the system. I am by no means an expert in the different technological aspects of

introducing digital voting in a booth to then be printed, or whatever mechanism there might be. There are far more people who have submitted submissions during this process who have had very interesting recommendations in this regard, but some of them have suggested a way in which that might be carried out.

The Hon. Dr PETER PHELPS: Yes, but the way they suggested it be carried out involves a fundamental illegality, and that is the active recognition in the software that you are in fact not voting, and the requirement of the Act is that you vote. The argument that you only have to turn up on polling day is a de facto argument, it is not a de jure argument.

Ms MURNAIN: Yes, I understand that.

The Hon. Dr PETER PHELPS: We would be legitimising people breaking the law.

Ms MURNAIN: I think that is assuming that—

The Hon. Dr PETER PHELPS: Unless, of course, the Labor Party believes that voting should be voluntary?

Ms MURNAIN: We do not believe that voting should be voluntary. I appreciate the complexities of your argument. It goes to the point that if we were to introduce such a system in a polling booth, you would have a rigorous testing phase and a long discussion about the legislation around it. I am not suggesting for a moment that we would rush into this, and particularly with the current legislation you would need to rewrite part of the Act about this. I understand the issues with that, but I think the fundamental assumption that people are all going in to vote informally deliberately is a complete and utter—it is incorrect. There are people who want to vote formally who go in and do not understand the system and then they accidentally vote informally, and to assume that all of those people want to vote informally is a mistake.

I have scrutineered enough ballots to understand that there are people who want to vote formally but they did not understand how to. We saw it at the last Federal election. I know this is a State inquiry, but I think up to 6 per cent or 7 per cent of people in the Senate—at least when I had last checked—voted informally. I am not certain that all those people wanted to, having looked at their ballot papers when we were scrutineering over the past few months. There is an underlying assumption that is incorrect. We had people walking out of the ballot booth at the Federal election—it is less so at the State—saying, "I think I just voted informally. I wish you had told me before I walked in how to vote properly." It is quite a busy day. Any method to ensure that those people have the opportunity to vote formally has to be a priority. If you have to rewrite legislation to allow that, do it.

Mr MARK TAYLOR: So far as pre-polling and time frames are concerned, do you have a comment on the time frames for ballot draw, pre-poll and election?

Ms MURNAIN: I understand there has been a lot of discussion about this. I absolutely believe we need more time between the ballot draw and the vote. Obviously political parties need the opportunity to be able to print how-to-votes at the moment—you all understand the process, but having a ballot draw and then having a weekend when you are asking printers to come in on the weekend and work all through the night to get ballot papers drawn up for pre-poll on Monday is difficult. I would absolutely support more time and a change to the Act to allow it to give us at least a few more days between the ballot draw and the vote.

The Hon. Dr PETER PHELPS: I wish to follow up on that. There are two ways of doing that, either pushing the opening of pre-poll back so you have a shorter pre-poll period, or moving the draw, close of nominations and draw forward, potentially by an earlier issue of writs. Which would you guys prefer?

Ms MURNAIN: We would prefer to keep the pre-poll at the current levels. We would prefer to push back the nomination and the ballot draw process.

The Hon. COURTNEY HOUSSOS: So bring it earlier.

Ms MURNAIN: Correct, yes, bring it earlier, not back. My goodness, do not give us any less time.

The Hon. Dr PETER PHELPS: Forward.

Ms MURNAIN: Forward.

The Hon. BEN FRANKLIN: Thank you, Mr Taylor, that was one of my questions. An excellent answer, if I might say so.

Ms MURNAIN: I think we are all on a unity ticket.

The CHAIR: I think we all are.

The Hon. BEN FRANKLIN: I want to clarify a couple of issues that have been raised previously. The first is a statement of fact, really. My understanding is—and can you confirm this—that you asked the Electoral Commission whether you could see the iVote ballot paper on the screen before it was made live and it refused. Is that correct?

Ms MURNAIN: I believe it was after when some concerns were raised about it initially. We also asked them on the Friday what processes they had in place for us to have a look at the system and they said that we were not entitled to. I have to double-check the timing of all of that; I would not want to mislead the Committee. I can double-check that and have a look.

The Hon. BEN FRANKLIN: When you asked them afterwards and some concerns were raised, did they allow you to see it then?

Ms MURNAIN: I understand on the Tuesday or Wednesday there was a process put in place when they were able to have a look at it.

The Hon. BEN FRANKLIN: In regard to the issue that Mr Rowell raised on the Legislative Council ballot paper, you made the point, quite rightly, that party registration requirements are sufficiently onerous so they should not be stopped or in any way prejudiced from taking their place on the ballot paper. The greater issue is about independence and individuals. That is something that Anthony Green looks into a lot.

Ms MURNAIN: Yes. His view is that when a third of those on the ballot get less than 2 per cent of the vote, or a very small percentage of the vote, they are people who are just wasting everybody's time because they are not going to be elected.

Your point about the validity of democracy is, of course, correct. We must always ensure that anyone who wants to run is able to. There are a couple of solutions that are posited for this problem with respect to minimising the number of candidates who are clearly not going to be elected. Those are, first, by increasing the nomination fee and, secondly, by increasing the number of nominators from 15, as it is currently, to potentially 50. That is his suggestion. How do you feel about that issue?

Ms MURNAIN: As you know, the processes for a political party to register are very onerous—750 registered members. It literally takes us months to try to make sure that we submit it appropriately.

The Hon. BEN FRANKLIN: But appropriately so.

Ms MURNAIN: Absolutely, it is appropriate. With respect to independent candidates, we are not Independents; we are the Labor Party. I have not put much thought into the processes of nomination. If there were an increase in the number of signatures required we would be open to a discussion about that but I think the Independents that run and get elected may have other views on that. I am happy to have further discussions about it but, from our perspective, more participation should be encouraged. The issue with the nomination fee is that there are people who are not wealthy who might like to nominate in this democracy, and I think we would not support moves to increase nomination fees. I am happy to enter into further discussions about having more signatures for nominations.

The Hon. BEN FRANKLIN: There are no Independents who get elected. There are two who went close—one was Pauline Hanson, obviously, in 2011, and one was John Hatton. Neither of them even made it. So we are not talking about people who are getting elected, although obviously they should have a right to run and we should not try to stop them. That is my first point. My second point is that you have spent some time talking about the need to minimise informality of the vote. Surely a smaller ballot paper with fewer joke candidates—and I am being frank—who are not going to get elected would increase the likelihood of formality and that would be something that the Labor Party would support.

Ms MURNAIN: We would be interested in and support any mechanisms to reduce informality. In terms of whether or not Independent candidates are joke candidates, perhaps there are ways to determine whether they are serious about running. If there are mechanisms that we can introduce to ensure that the Independents are running appropriately and not simply to fill up a ballot paper, we would encourage those mechanisms. We would encourage any mechanism to ensure that they are legitimate and bona fide Independents who are genuinely running. I am open to further discussions about that. Despite the fact that Independents do not get elected, they should still have the right to participate. I firmly believe that. The Labor Party firmly believes that, and we always have. To think that someone might want to run as an Independent but could not afford a very costly fee is something that the Labor Party would not support. I know that we are a big party but, at the end of the day, we also encourage democracy. If that means a long ballot paper, that means a long ballot paper.

The Hon. Dr PETER PHELPS: By the same token, if someone says, "I am going to be elected because 125,000 people are going to vote for me in New South Wales but I cannot find 50 people who are prepared to put their name to that", that presents an interesting problem for that potential candidate.

Ms MURNAIN: We are probably in furious agreement about the second half of the suggestion.

The Hon. BEN FRANKLIN: Without pre-empting the Committee's findings, I suspect that no-one will support an increase in the nomination fee. The thing that people will be looking at is an increase in nominators.

Ms MURNAIN: That is absolutely fair. It is a fair conversation, which this Committee should probably consider.

The Hon. BEN FRANKLIN: We just have to get the balance right.

Ms MURNAIN: That is exactly right. You cannot create a system where those in our society who are the most vulnerable do not have the opportunity to nominate if they so wish.

Mr ADAM CROUCH: Thank you for coming to give evidence today. We have obviously gone through point 3 in some detail—the behaviour with regard to the No Land Tax Party—as you and previous witnesses have given evidence. The Electoral Commission has questioned whether there should be a common code of behaviour to be signed by parties and candidates prior to an election. Would you be supportive of such a code of conduct?

Ms MURNAIN: I believe we are the first party to introduce a code of conduct to our political party. It was something that we introduced as a result of some internal reviews in our party—as a result of some issues in our management last year. We have done that proactively. We are very keen to make sure that that is established as best practice. We are keen to share that with other parties.

We are very open to that as a suggestion. It is the first time that I have heard it but I am certainly very open to having a discussion about that. The bigger issue with the No Land Tax Party is that the commission has very little remedy to take, other than Fair Work Australia going after them for not paying wages. That, for me, is a bigger concern—the commission cannot do anything to the No Land Tax Party at this point to stop them from coming back at a later election if they register in the appropriate way.

Mr ADAM CROUCH: So action could be taken to have them barred from registering under that name or under a subsequent name if the same officeholders are trying to reregister.

Ms MURNAIN: If an appropriate process was put in place. We also would not want to give the Electoral Commission the outright ability to ban a political party, because political parties go through all sorts of issues. We try to remedy those issues as quickly as possible. The majority of people at this hearing run quite large political parties and we know that there are issues that we constantly have to grapple with. We would not want to be in a position where the Electoral Commission could unilaterally withdraw the registration of a party because they feel like it. There would need to be a very strenuous process in place. However, the No Land Tax Party, in my very strong opinion, have done more damage to democracy in this State than any other political party in the past. My very strong view is that action should be taken against them.

Mr ADAM CROUCH: I would like to follow up on that. At the last State election—and we saw it at the Federal election as well—there were a large number of third-party participants.

Ms MURNAIN: Yes.

Mr ADAM CROUCH: Should those participants be made to sign the same declaration as a party and/or candidate and maintain the same level of responsibility as a party or a candidate?

Ms MURNAIN: You are presenting a hypothetical situation. We have heard from third parties who already have to go through very onerous processes to try to make sure that they register and to ensure that their disclosure is reported appropriately. We support that level of disclosure, but obviously there are a lot of hoops that third parties already have to go through to register and participate in our democracy. If mechanisms are introduced that encourage good behaviour at elections, as a political party we would encourage that. We would have to be very careful of the content of it and how it is enforced to ensure that it does not prohibit third parties from participating with free speech.

Mr ADAM CROUCH: If parties and candidates have to maintain a certain standard anybody involved—anybody participating—should have to maintain the same standard.

Ms MURNAIN: Absolutely, but we also have to make sure that we are not restricting the ability of these organisations to have their say. If there is any move to restrict what they say or how they say it that would be something we would be very concerned about.

Mr ADAM CROUCH: Last week evidence was given to us with regard to potentially misleading signage at a State election level. One of the suggestions made was that any signage being put up—either on pre-polling days or on polling day; there are two parts to this—should have on it the logo of the organisation putting it up. It could be the Liberal Party or the Labor Party. Which party was it that—

The CHAIR: I am not sure it matters which party it might have been.

Mr ADAM CROUCH: We are saying that the logo, of whichever third party it is, should be shown on that particular piece of material. Secondly, on Election Day, the returning officer should be given the brief on all the material that has been approved to be put up on Election Day, and the returning officer goes out and approves the material at the front of a polling booth.

Ms MURMAIN: Oh wow. In terms of the specific allegation, I know we have taken a lot of time in this Committee in the information provided by The Nationals. I understand that that was dealt with on Election Day and we firmly responded to that after requests by the Electoral Commission. That is the first response.

The Hon. BEN FRANKLIN: I do not think that is what Mr Crouch is talking about. He is talking about misleading material, not oversize material.

Mr ADAM CROUCH: Yes.

Ms MURMAIN: Okay, right. All right. So in relation to your suggestion that material for Election Day needs to be approved, we would not support any move to have material that gets displayed on booths having to be approved before Election Day by anyone. How-to-votes and ensuring that how-to-votes comply with legislation is important and we fully support the current process in place to encourage that because we would not want people to be submitting—and it certainly helps political parties where we have to provide our how-to-vote and then it tells us whether we are providing voters with the correct information about how to vote formally. We support that process.

The idea that you have to register every single piece of Election Day material I think is onerous. Given how quickly elections move, I do not believe that it is either democratic or reasonable to request that parties do that, or Independents, first of all. In relation to misleading electoral material, I think any moves to make sure that they are appropriately identified, we would support. We have done that in terms of how-to-votes. The legislation here in New South Wales is very specific in that nature. Certainly in regard to identifications of a party's authorisation, that is already very clear in Election Day material, in my view. But, if putting a logo on it is going to make a difference, then we are very happy to have further conversations about that because we have seen that from certainly the No Land Tax Party and other parties that have put up, in my view, misleading information. However, the idea that we would have to register Election Day material in regard to what goes on fences or what goes on telegraph poles, I think that is probably a step too far.

The Hon. BEN FRANKLIN: I wish to follow up on that just very quickly, Mr Chairman.

The CHAIR: Okay, but just before you do, I remind Committee members that we still have to get to questions from Dr Phelps.

The Hon. Dr PETER PHELPS: That is okay. I will put my questions on notice.

The CHAIR: No, we have the time. That is fine. I am just noting the time, that is all; so, quick questions.

The Hon. BEN FRANKLIN: Can I drill into the intellectual reasoning behind that? It is not just how-to-votes that you hand out on polling day, right? You also have to register anything that you hand out on polling day.

Ms MURMAIN: Yes, which we support.

The Hon. BEN FRANKLIN: It might be, for example, a message saying, "You should not vote for Labor because it is absolutely lying on this Medicare scam"—for example; just as an example.

Ms MURMAIN: For an example, okay.

The Hon. BEN FRANKLIN: I have to register it if I am going to hand it to you on polling day so that you see it as a message as you walk into the booth, but I do not have to register a sign that says exactly the same thing.

Mr ADAM CROUCH: Yes. That was my question.

The Hon. BEN FRANKLIN: The mere fact that I am not handing it to you but it is on a fence, what is the difference? It seems utterly intellectually absurd to me.

Ms MURMAIN: I believe that handing out material and asking a voter to vote formally is the process and which is the reason why we hand out how-to-votes on Election Day—to make sure the people vote formally. If we have not persuaded voters by the time they are going into the booth, I would say that—

The Hon. BEN FRANKLIN: But it is more than how-to-votes that you are handing out. You can hand out messages as well.

Ms MURMAIN: And you have to register them.

The Hon. BEN FRANKLIN: They have to be registered.

Ms MURMAIN: Absolutely, and there are guidelines about them.

The Hon. BEN FRANKLIN: But my point is this: Why does a piece of paper that you hand to someone need to be registered, but if you put the same piece of paper on a fence, it does not need to be? How is that intellectually justifiable?

Ms MURMAIN: First of all, there are lots of posters that go up on Election Day. The idea that we are going to require everyone to put every single poster into the Electoral Commission before Election Day is, quite frankly, ludicrous and it is onerous. Handing material out to a voter and explaining to them how to vote—and we welcomed the stricter rules that were introduced in relation to making sure that we identify political parties on the material that you said we hand out; you know, message material, pamphlets and whatever else on election day.

We supported the change of legislation that fixed errors and issues with other parties—obviously, not the Labor Party—misleading voters in relation to certain messages. We would absolutely want that to continue, but we do not support having to register posters on Election Day. People write in handwriting on handwritten posters on Election Day. Are you really expecting people who want to come and exercise that opportunity—

The Hon. BEN FRANKLIN: Respectfully, I would say you are because you are asking them not to write something and hand it out on polling day.

Ms MURMAIN: But they are not handing it out. They are putting it on a fence.

The Hon. BEN FRANKLIN: That is my point. There is no intellectual difference between the two.

The CHAIR: Order!

Ms MURMAIN: I think the nanny state that your Government is trying to implement here in New South Wales seriously needs to be questioned.

The CHAIR: Okay, thank you very much for that exchange. The witness may withdraw that comment, if she likes.

Ms MURMAIN: No. You can tweet it, if you like.

The Hon. Dr PETER PHELPS: Going back to iVoting, you mentioned iVoting communication. Lists of postal voters are provided to political parties. Do you receive lists of registered iVoters?

Ms MURMAIN: No.

The Hon. Dr PETER PHELPS: Do you believe you should have a registration process for iVoters and that would be communicated to the parties?

Ms MURMAIN: Yes, and I do not see any reason why that is not done in real time. I think I have added that in my submission. If, for example, a girl in Narrabri is living out of town and is not going to be in town on Election Day but wants to vote, she registers through iVote. Her details go directly to the Electoral Commission—the phone number and the email address. Why is it that registered political parties or even Independents, or anyone who is registered to run in an election—everyone should be entitled to the data, in my view, as it comes in.

The Hon. Dr PETER PHELPS: Agreed. In relation to the provision of mobile and email data, that should also be provided to political parties and relevant candidates in the area?

Ms MURMAIN: Yes.

The Hon. Dr PETER PHELPS: But just as an anti-spam measure, would you recommend that, for example, any communication from a party or a candidate be limited to one, and one only, piece of communication; otherwise, you face a situation where, maybe not our parties, but you will get nutter candidates who literally spam the hell out of voters from whom they have received this data via the Electoral Commission processes?

Ms MURMAIN: That is a really good question. The reason I say that is—

The CHAIR: Can we tweet that?

Ms MURMAIN: Yes.

The Hon. Dr PETER PHELPS: I will put that on my next preselection material—endorsed by the General Secretary of the Labor Party!

Ms MURMAIN: This is a broader discussion that we have to have about mobile numbers and email addresses collected by the Electoral Commission and appropriate uses of it. Obviously, political parties have had issues with appropriate uses of electoral information. In terms of limiting the ability for people or political parties or candidates to contact individuals, I think that is probably a step too far, but there should be guidelines governing the kinds of behaviour and what you use those email addresses for.

For example, we have got this in terms of making sure that your emails clearly outline who is authorising the email. Back to your point before about making sure that things like the logo is on it so that it is not deliberately misleading, there should be further thought particularly around email and mobile phone communication to make sure that there are guidelines around those types of communications. The problem with the Act is that it just assumes that everything is done by mail still, and the world has moved on. It is 2016. To think that we are not prioritising email and mobile phone numbers as a method of communication with voters to make sure that they show up and vote, and to ensure that they vote formally, is—

The Hon. Dr PETER PHELPS: With respect, the marginal cost under the existing system for postal vote for a spam campaign is 70¢ per communication whereas for an SMS or an email it is .0001¢ per communication.

Ms MURMAIN: Where are you getting your SMSs? That is amazing.

The Hon. Dr PETER PHELPS: Oh well.

Ms MURMAIN: They are much more expensive than that is, I can tell you, because we just paid for them during the Federal election.

The Hon. Dr PETER PHELPS: Okay, but email is certainly a situation where you have very low marginal costs for communication.

Ms MURMAIN: Absolutely, but my view in a democracy is that we should be able to communicate with voters as much as possible. That is why there is a thing called an unsubscribe button. If voters unsubscribe from an email, then that allows them to not be communicated with unwanted information from individuals or political parties.

The Hon. Dr PETER PHELPS: On our emails, but not necessarily emails from what you might call the—

The CHAIR: Other candidates.

The Hon. Dr PETER PHELPS: —fringe candidates.

Ms MURMAIN: Yes, but that is why we have to introduce some regulations around emails.

The Hon. Dr PETER PHELPS: That is fine.

Ms MURMAIN: And allow for recourse if they ignore multiple requests for unsubscribing.

The Hon. Dr PETER PHELPS: Just going on to how-to-votes online, it is your recommendation that for the online system, how-to-votes be made available. How would you envisage that? You cannot just have 14 PDFs suddenly bump up on your screen as you go to fill in your vote.

Ms MURMAIN: No.

The Hon. Dr PETER PHELPS: Even though that actually replicates the physical voting process.

Ms MURMAIN: Yes.

The Hon. Dr PETER PHELPS: How would you envisage it happening? Presumably you have your ballot papers appear.

Ms MURNAIN: Yes.

The Hon. Dr PETER PHELPS: What is the physical process you do as an online voter to get a how-to-vote?

Ms MURNAIN: Again, there might be more discussions with technical experts than me, but I would suggest either a hyperlink at the top—let us take the upper House, for example—a hyperlink through or a little button that allows people to link through to a how-to-vote if they so wish. Whatever it might be, we should certainly have more discussions with some of the experts who have provided advice to you.

The Hon. Dr PETER PHELPS: Then are we not on a slippery slope where you would hit a hyperlink and the ballot paper would be filled out for you?

Ms MURNAIN: I think that that is probably a step too far.

The Hon. Dr PETER PHELPS: You would not recommend that?

Ms MURNAIN: No, not at all.

The Hon. Dr PETER PHELPS: That is fine. Essentially you are heading towards an American system at the point where you hit the button and your entire ticket for Federal, local and State are filled out for you.

Ms MURNAIN: I would say that America is not the best practice for voting integrity in this world.

The Hon. Dr PETER PHELPS: You are a country girl originally, are you not?

Ms MURNAIN: Yes.

The Hon. Dr PETER PHELPS: There is quite a large amount of space in country New South Wales, long distances between towns and things like that.

Ms MURNAIN: I have driven them, yes.

The Hon. Dr PETER PHELPS: At the current time there is an electorate that is 350,000 square kilometres in size and is likely to increase, as a number of western electorates are. What would be the view of the Labor Party if, for a very limited number of electorates, there was a statutory malapportionment applied to those electorates so as to at least reduce their size to something a little more manageable for the normal functions of a lower House member to be able to fulfil?

Ms MURNAIN: We believe in representative democracy, and that means making sure that there is consistency between the sizes of electorates across the State. That being said, I do acknowledge the huge size of some of these electorates. I grew up with my mother running for this seat of Gwydir, which was bigger than most countries in Europe. I can understand the issues from the tyranny of distance. Once a member is elected—and certainly in relation to this State Parliament—they are given additional allowances to enable them to service those electorates. I certainly believe, and our party believes, that if you are representing regional electorates you should be given more resources to enable you to service them. Once you are elected, that process occurs. I acknowledge that there are huge tyrannies of distance, just as in the cities people cannot seem to get into apartment blocks that are now secured to doorknock them. At least you can doorknock houses in places like Narrabri. There are challenges no matter which electorate you go to in terms of being able to contact and discuss issues with voters. The fact of the matter is that we have a system that is built on a representative democracy, and that is something we will defend.

The Hon. Dr PETER PHELPS: Except that in both Western Australia and Queensland the Labor Party in those States has no problem with the statutory malapportionment being applied with their supersized electorates.

Ms MURNAIN: In New South Wales we support a representative democracy.

The Hon. BEN FRANKLIN: But the concept of representative democracy is not mutually exclusive from malapportionment.

Ms MURNAIN: You could argue that.

The Hon. BEN FRANKLIN: No, it is not, because every voter still gets represented. What you are talking about is one vote, one value, which is that different thing from representative democracy.

Ms MURNAIN: You can absolutely argue that making those electorates smaller to allow them to be serviced because of the tyranny of distance allows for candidates to be able to service them better, when they are a candidate. But the fact of the matter is once someone is elected, they are given additional resources to service those electorates. That is where it matters, and that is something that we think should continue to occur. At this stage, again, I am happy to consider and have further discussions about this, but the Labor Party's position is that we continue to have electorates that are of equal size.

The CHAIR: Thank you for appearing before the Committee today. If there are further questions from Committee members, would you be happy to receive those in writing and respond?

Ms MURNAIN: Absolutely. There was one question about when we asked permission to look at the iVote. Because it was such a long time ago I am not entirely sure when that occurred. It absolutely occurred, so if I could take that on notice and respond to the Committee.

The Hon. BEN FRANKLIN: It is important, so we would appreciate that.

Ms MURNAIN: Absolutely.

The CHAIR: Like your friend in the unions, did you have fun today?

Ms MURNAIN: Absolutely.

The CHAIR: Please tweet that as well.

The Hon. Dr PETER PHELPS: It is not a KPI, Jai.

(The witness withdrew)

SUSAN ELIZABETH GREGORY, Vice President, Electoral Reform Australia, affirmed and examined

STEPHEN ARTHUR LESSLIE, President, Electoral Reform Australia, affirmed and examined

The CHAIR: Before we proceed, do you have any questions in relation to procedural issues?

Mr LESSLIE: No.

The CHAIR: Would you like to make an opening statement?

Mr LESSLIE: Yes, I would. Ms Gregory is the immediate past President of Electoral Reform Australia. We are a lobby group, not a political party. Proportional representation is a topic that makes people's eyes glaze over. Most people feel it is too complicated and do not listen or they think they know all about it and do not listen. For those who think they know all about it, here is a quote from the great American palaeontologist Stephen Jay Gould:

Few intellectual tyrannies can be more recalcitrant than the truths that everybody knows and nearly no one can defend with any decent data (for who needs proof of anything so obvious).

That the sun goes around the Earth is probably the most infamous example. Here are some truths that everybody knows, truths that we believe are wrong. Proportional representation results in hung parliaments, more Independents will win seats, to ensure votes do not exhaust you must vote for as many candidates as there are positions to be filled. If you believe any of these statements, where is the mathematics or data, where are the research papers and the peer-reviewed academic studies to support your belief?

The basic principle of proportional representation is very simple: To be elected a candidate needs a quota and preferences from unpopular candidates and parties should, when excluded, help elect candidates from the more popular parties. That sounds basic enough, but it is not what currently happens. The current position is that popular parties elect a limited number of candidates equal to the number of quotas determined by their first preference votes. These more popular parties are then excluded from any further participation in the count, leaving a number of positions open to be filled by the unpopular parties. The process is tontine: Micro parties left standing at the end of the count are the ones that are elected. Generally speaking, a lucky ballot position and an emotive name will have the most influence on the result.

You will note that we use the term "popular parties" not "major parties", because we do not care who they are. Our definition of a popular party is one that can get more than a quota of votes. At the recent New South Wales Senate election the Liberal Democratic Party received 3.1 per cent of the vote, only 0.41 of a quota, but still elected one senator. The Liberal-Nationals Coalition received 35.8 per cent of the vote and elected five senators. The Labor Party received 31.2 per cent and elected four senators. The Liberal-Nationals Coalition is not just five times as popular as the Liberal Democratic Party; it is 11 times more popular. The Labor Party is not four times as popular but 10 times. We believe that at least five senators elected at the recent Senate elections with genuine proportional representation would not have been elected—two in New South Wales, one in Queensland, one in South Australia and one in Western Australia.

The highest vote that any of those candidates received was 0.54 of a quota. We believe that with the reforms we are proposing no candidate would be elected unless they reach half a quota in first preferences and no candidate with less than 0.75 of a quota would have any reasonable expectation of being elected. The proportional representation system currently in place for the Senate, especially when used to elect senators at a double dissolution, is a good approximation for the proportional representation system used to elect Legislative Council members in New South Wales. We believe that at the next Legislative Council election at least five candidates will be similar and, in our view, undemocratically elected.

The reason the system has fallen into disrepute, enabling candidates to be elected on a minuscule percentage of votes, is that voters are being swamped by meaningless choices. We have to stop thinking that running for Parliament is the same as a cheap holiday at a beach. Micro party and make weight candidates expecting to win is the same as a couch potato who can hardly dog paddle across the pool waking up in January and declaring, "I think I'll go to the Olympics this year and win a gold medal in swimming". Elite athletes know they have to put in 10,000 hours or more before they can expect to be on the squad. Many micro party candidates do not believe this, and rightly so. They have seen that if the pool is swamped with dog paddlers the elite swimmers have no room to move and some of the dog paddlers will get to the other end first. The rewards are so good and costs so minimal that the cost-benefit analysis these micro party undertake is always favourable. The more micro parties that run the more favourable the analysis is. One Eddie the Eagle is amusing but 100 or 300 is pathetic.

Electoral Reform Australia believes that before any reform is achieved the number of candidates standing in individual groups, and in due course the number of groups, must be substantially reduced. We

recommend that the following changes be made to the New South Wales Legislative Council electoral system. If implemented these changes will ensure that no candidate is elected unless they receive a quota. A warning though, these recommendations cannot be cherry-picked, if you do not implement all of them there is little point in implementing any of them. Whilst they may separate headings they are strongly interconnected. We recommend increasing the electoral deposit; start public funding at 4 per cent; rotate candidates within party groups; abolish above the line voting and introduce fully optional preferential voting; and count the vote using the Meek method of counting. All of those points have a considerable amount of data to go with them. I could press on and hope I could get questions or I can wait for questions.

The CHAIR: Ms Gregory, would you like to make a statement?

Ms GREGORY: I will sum up.

The CHAIR: There will be opportunity at the end to sum up.

The Hon. Dr PETER PHELPS: In relation to your suggestion of rotation of candidates within the Legislative Council ballot paper and abolition of above-the-line voting, that presupposes that the members of the public have informed themselves sufficiently enough to determine within a party grouping as to which person they would prefer. What evidence do you have that voters at the current time, or in the future, are likely to do that? For example, you say that it is unfair that people find themselves in a lucky position on the ticket.

Mr LESSLIE: No.

The Hon. Dr PETER PHELPS: Who is to say that a lucky position on a Legislative Council ticket will not result in someone who is manifestly not as good being elected when the internal party processes have determined a certain ranking of candidates in order of their ability?

Mr LESSLIE: We do not have a problem with the individual parties ordering a ballot listing. We do not recommend what they call the Robson rotation where the order within the party candidates is randomised. We have no problem with a political party choosing a strong candidate, a Minister or a shadow Minister, followed by a new candidate, followed by a strong candidate, followed by a new candidate so that individuals get their own individual quota and that quota can flow through to the candidate immediately underneath them. The Robson rotation tries to prevent that. We think the political parties have the right to determine, within their own grouping, the order of the candidates.

We believe it is undemocratic. Once the Liberal Party gets eight or nine quotas, the vote cascades down the party group and the tenth candidate may well end up with 0.03 of a quota and cannot get elected because at the next count that candidate, as soon as all the quotas are filled, is excluded, along with every other candidate making up the Liberal Party ticket. The same applies to every group that gets over a quota. Should the votes be rotated in any order that candidate, who is number 10, instead of having 0.03 of a quota, ends up with 0.6 or 0.8 of a quota and remains in the count, being able to collect preferences when the micro parties and the make weight candidates and ungrouped candidates are excluded. In this case the unpopular parties are helping to elect the more popular parties and we think that is perfectly democratic.

The Hon. Dr PETER PHELPS: You are combining two elements. You say we cannot pick and choose. You have a system where you rotate candidates within party groups. So you will have, first, how-to-votes which do not replicate the appearance of the ballot paper in strict naming order and, secondly, you allow for a preference of optional preferential. I put it to you that were those two things to be put into effect you would have a situation where the majority of voters who do not, given an optional preferential system, fill out a full preference flow, go into a ballot booth, pick up a Liberal Party how-to-vote, they will see number one goes to John Ajaka, they will go in and find Mr Ajaka in his wrong position because the how-to-vote is not directly correlating, and they will vote one for Mr Ajaka. There is no box above the line. Mr Ajaka will get 450,000 votes across New South Wales and there will be a large number of extinguishments after that.

Mr LESSLIE: There will not be any extinguishments. Why would there be exhaustive votes?

The Hon. Dr PETER PHELPS: Because they have only done one for Mr Ajaka because there is no ability to allow preferences to flow through a party grouping other than if the individual decides to allocate those preferences.

Mr LESSLIE: There are two things. Most voters of a political party are voting for the party. It might surprise the members of the Committee that it would be hard to find many members of the public who could name three members of the Legislative Council. When they go to vote they vote for the party.

The Hon. Dr PETER PHELPS: You are denying them the ability by having no box above the line.

Mr LESSLIE: They vote one for the lead candidate in group C and then they will automatically vote two for the second candidate and three for the third candidate.

The Hon. Dr PETER PHELPS: Why will they automatically vote that way? Mr Green has made repeated studies of this that show where there is an option not to vote the full preference flow people will choose to vote one.

Mr LESSLIE: Mr Green is wrong. Any returning officer for any community group, committee, university, or students association will tell you that the very first question every returning officer gets when a voter turns up is, "How many do I have to vote for?" They automatically vote for those numbers. That happens. Secondly, to think that people will go in when you have 80 or 100 candidates and think all we have to do is vote for one when they know full well that there are 21 to be elected and to think they will stop at one is a nonsense.

The Hon. Dr PETER PHELPS: What percentage of the population do you think knows that there are 21 members up for election at a regular State election?

Mr LESSLIE: I doubt that many know there are 21, but 99 per cent would know there was more than one. Most people know there are many candidates to be elected. Clearly, there has to be a lot of candidates elected because we have 100 people on the ballot paper in front of us. It is obvious that is the case. People know that there are a lot of senators to be elected. We are voting for an upper House, we can see it, and we have a ballot paper with eight names for the lower House and the upper House—

The Hon. Dr PETER PHELPS: It is unclear and you have given them the option simply to vote one and not for a party ticket for a single individual.

Ms GREGORY: There is the opportunity to have instructions on the ballot paper. The Australian Capital Territory Legislative Assembly ballot paper states that voters can vote for only one candidate, but they are encouraged to vote for more, and people do. That is a matter of record.

Mr LESSLIE: The Australian Capital Territory ballot paper states at the top and the bottom that there are five people to be elected. Voters are instructed to vote one to five. It is clear enough; it is not an issue.

The Hon. PETER PRIMROSE: The Greens have given evidence and recommended that pre-poll voting should commence only eight days before polling day. Do you have a view on pre-poll voting generally and that specific suggestion?

Mr LESSLIE: We have no interest in or position on pre-polling. That is not part of our brief; we are perfectly happy with the system as it is. We do not recommend any more or less pre-poll voting.

The Hon. PETER PRIMROSE: Do you have any views on pre-polling generally?

Mr LESSLIE: Personally I do, but not as part of the group. I think that voting is a right and a privilege, not a chore. We should stop pandering to people about extending pre-poll voting. It is good that people turn up at a polling booth, buy cake from the local P&C and P&F, and meet people in their community. Pre-poll voting and the extension of electronic voting for people who are considered to be too busy is not something I am interested in.

The Hon. PETER PRIMROSE: The Electoral Commission has concerns that reduced postal delivery services will impact on postal vote material being delivered within relevant time frames. It has suggested that electoral legislation be amended so that postal voters are registered to iVote. Do you have a view on postal voting and that suggestion in particular?

Mr LESSLIE: I have not examined that at all.

The Hon. ROBERT BORSAK: Point 3 of your document refers to increasing electoral deposits from \$5,000 for a group to \$5,000 per candidate. Is that not a restriction on the democratic process?

Mr LESSLIE: Not at all. I have a document that I wish to read onto the record:

In the Legislative Council, the electoral deposit, we believe should be raised to \$10,000 a candidate. For a two-candidate group, this amount is only four times greater than the \$5,000 currently required for a group.

We have stated elsewhere—we have not had that question yet—that the number of candidates being required to stand in a Legislative Council election should be only two, exactly the same as we have for the Senate. The document continues:

We would also recommend that electoral deposits be returned in 40 separate instalments, being fully refunded when the candidate gains a vote equal to 50 per cent of the quota calculated at the point in the count when the candidate is excluded.

The Hon. BEN FRANKLIN: Did you say that you thought the deposit should be \$10,000 per candidate?

Mr LESSLIE: Yes.

The Hon. BEN FRANKLIN: But your submission says it should be \$5,000 per candidate.

Mr LESSLIE: We have not made a submission.

The Hon. BEN FRANKLIN: To this Committee?

Mr LESSLIE: What submission is that?

The Hon. BEN FRANKLIN: The written submission.

Mr LESSLIE: We have not made a submission.

The Hon. BEN FRANKLIN: It is the submission to the Joint Standing Committee on Electoral Matters.

Mr LESSLIE: That is a much earlier submission.

The Hon. BEN FRANKLIN: So you have changed your position?

Mr LESSLIE: My apologies. I did not realise that was part of the Committee's background.

The Hon. ROBERT BORSAK: You referred to 40 instalments. Why would you refund it in 40 instalments?

Mr LESSLIE: I will read on:

Any candidate reaching 2.28 per cent of the vote would have their deposit returned in full. Preferences from an excluded candidate are highly likely to transfer to their running mate, further reducing the electoral deposit paid.

In effect, they could double dip on the return of the deposit. It continues:

Returning the deposit in this manner puts the penalty back in the hands of the electorate. The better the group does, the more they get back. Setting the electoral deposit against candidates and not groups would discourage groups from running an excessive number of candidates simply because they can—

I point out that four groups in New South Wales did that at the Senate election—

and because it is free.

Once you have run a certain number, it is free to run more. The document continues:

For groups who have candidates elected, the cost, if any, in lost electoral deposits for the last one or two of their candidates is insignificant compared to the amount they would receive in funding and parliamentary salaries.

For the Legislative Assembly, we would recommend a deposit of \$5,000—

Again, that would be returned in 40 instalments. It is 40 instalments because for every 0.1 per cent of the vote a candidate gets, they get back \$125. Public funding cuts in at 4 per cent. It continues:

We would recommend that the amount set aside for public funding cuts be the same, but it would start at so much per vote from 4 per cent. A candidate for the Legislative Assembly receiving exactly 3.9 per cent of the vote would pay \$125 in electoral deposit and one at exactly 4 per cent would receive back all their electoral deposit, but would receive no public funding. Again, this puts the electoral deposits and public funding on a continuum. We think it is unreasonable that a candidate at 3.99 per cent loses all of their electoral deposit and a candidate at 4.01 per cent receives a massive amount of public funding.

We think that the electoral deposit should be increased. However, the Legislative Assembly candidate who gets 3 per cent gets back three-quarters of their funding. We should put it into the hands of the electorate. The Parliament should set the figure, but the penalty is determined by the voters.

The Hon. ROBERT BORSAK: Are you aware that there is no winner-takes-all electoral funding in New South Wales if you are elected or get 4 per cent of the vote? You are refunded only what you have spent. If you spend nothing, you get nothing.

Mr LESSLIE: That is fine.

The Hon. ROBERT BORSAK: What effect does that have on your system?

Mr LESSLIE: None, but it certainly changes the second half of that continuum. I understand that. However, there is still a continuum for the candidate who gets zero votes, like one of the candidates standing for the No Parking Metres Party at the last election who got no votes. As far as I am concerned, that candidate should lose his entire deposit.

The Hon. ROBERT BORSAK: He did.

Mr LESSLIE: That is good. However, someone who is just short should not suffer the same penalty as someone who, as someone said earlier, is seen as a joke candidate.

The CHAIR: Do you support the introduction of compulsory identification on Election Day?

Mr LESSLIE: No, I do not.

The CHAIR: Would you like to expand on that?

Mr LESSLIE: We like to see voter participation as high as possible. In our view the number of people who are found guilty or who are likely to have committed electoral fraud is far lower than the number of people who would have been denied a vote because they were unable to provide voter identification to the requirement that may be set in any legislation.

The CHAIR: What about if you did not have—

Mr LESSLIE: I will expand on that. The crime of housebreaking, as I understand it, and the crime of burglary are much the same. They involve somebody coming into your property and taking your goods. But housebreaking happens through the day and burglary happens at night, and the penalty for burglary is much greater than the penalty for housebreaking. We think the penalty for something that is hard to find such as electoral fraud should therefore be substantial to discourage this. That would be the approach to take to stop electoral fraud.

Mr ADAM CROUCH: I think you said we would discourage it because it was hard to find. Do you also think it is perhaps problematic that because we do not have voter ID that is why it is so hard to find?

The CHAIR: And you could introduce a system of vouching or statutory declarations to ensure that legitimate voters do not—

Mr LESSLIE: People in Australia do not carry IDs all the time and they certainly do not necessarily carry them on a Saturday morning when they are jogging and they go past a polling booth. I feel that it is not something that people are going to—

Mr ADAM CROUCH: In the recent Federal election a seat was lost by 30-odd votes. In a State election with roughly 55,000 voters per seat, if it came down to 30-odd votes do you not think that the potential for voter fraud could have an impact on the result of a seat?

Mr LESSLIE: I have no reason to believe that electoral fraud only goes one way as opposed to both ways.

Mr ADAM CROUCH: I am not talking about which direction it goes. What I am saying is if identification requirements were introduced, in a very marginal seat could that not discourage the instances of voter fraud?

Mr LESSLIE: I think Mr Ewan Jones would have been far better off in his time in Parliament had the candidates on his ballot paper rotated so that he shared the donkey vote. Had he done that he would have been elected by 300 votes.

Mr ADAM CROUCH: Are you saying effectively that voter ID does not in any way discourage illegal voting or voter fraud?

Mr LESSLIE: I said earlier I am keen to keep voter participation as high as possible. Any excessive campaign against voter fraud will reduce voter participation. In my view it is not an answer to this. No, I do not think it will.

The CHAIR: If there are no more questions, is there anything that you want to leave us with?

Ms GREGORY: I could do my summing up act.

The CHAIR: Sure.

Ms GREGORY: This is basically a summary of the paper that Stephen has been reading from. Political parties in Australia have a long history of not really trusting the voters and of fiddling with the electoral system to try to manufacture a result. The first example is compulsory preferencing of candidates which results in larger ballot papers and increased informality. The second example is above the line voting coupled with prohibitively difficult below the line options—which we have seen slightly reduced—which results in two kinds of voting, larger ballot papers and a certain amount of cynicism about the electoral process. The third example is group voting tickets which effectively took control of preferences away from voters and resulted in

dissatisfaction and, again, greater cynicism. We have recently seen the abolition of the discredited group voting tickets for the Senate but retention of above the line voting, which was just half a solution, really. The final example is most recently compulsory preferencing above the line for the Senate created a solution where there was no problem that abolishing above the line voting would not have fixed.

Not one of these schemes has succeeded in producing a voting system that voters or commentators trust. They are seen as manipulative, inequitable and cynical. What we are asking is that you go back to basics, trust the voters, let the single transferable vote proportional representation system work the way it is supposed to, untrammelled by amendments and in delivering governments that are the considered choice of the people. These basics that we ask you to go back to in electing the Legislative Council are a simple uncluttered ballot paper with one set of instructions—no above the line voting; fully optional preferential voting with a single "1" to count as formal and voters encouraged to mark as many preferences as they feel they can give—sometimes they do not want to support parties, sometimes they do; and the rotation of candidates within groups on the ballot paper ensuring that the relative support for individual candidates is able to be expressed and that the votes of supporters who have no individual preference who simply want to vote for the party are able to be shared equally amongst all the members of the group.

The result of these three reforms will be fewer informal votes and fewer exhausted votes, hence a greater level of participation in the ballot, which is an improved democracy in our terms. This Parliament has the perfect opportunity to field test these reforms. The yet to be amalgamated local councils could be elected using the principles that we have described today. To get a proper understanding and to ensure that local communities are fully represented, these councils should be constituted and elected as councils of the whole rather than divided into wards. We feel that that would be a perfect opportunity to field test these proposals. Thank you very much for the opportunity to address you. We hope you will consider some of our submission.

The CHAIR: Thank you very much.

Mr LESSLIE: There is one last thing I would like to say about the next council elections to be held on 10 September. When it comes out, check the ballot for the Campbelltown council election. Campbelltown elects 15 people at large.

The CHAIR: I am a former councillor of Campbelltown council. I know it well.

Mr LESSLIE: Right. You would know therefore that to form a group you must have at least eight people. At the last election four groups only elected one. Therefore 28 people stood just to make up the numbers. It did not reduce the number of exhausted votes because people voted "1" above the line and just let their vote exhaust. Over two quotas exhausted. People did not vote around finding the next best candidates after their candidate was elected. And this is what is happening in the New South Wales Legislative Council. We recommend the number of candidates run be reduced from 15 to two. There is no value in having 14 makeweight candidates or 20 makeweight candidates for a party that is unlikely to even get one up.

You would reduce the number of candidates from 370 to approximately 80. You get the 80 by making every group and adding two more to the number of candidates that were actually elected from that group. Now you have a ballot paper that people can actually look at and make considered decisions on. Should they choose to give a preference to one party they then can see that they have not completed their task. The problem of running 15 to 21 candidates is voters think they have completed their task when they have voted for this one candidate above the line or they see a whole lot—that is their task.

The New South Wales Senate election demonstrated that voters did not just vote for one above the line, they continued preferencing to other groups. And in Tasmania more than a third of the people voted below the line, because they understand proportional representation in Tasmania. Had Senator Abetz been more interested in his party as opposed to his faction he would have elected five Liberal Party senators instead of four Liberal Party senators and the second Green. Had he been more interested in his party and actually encouraged voters to vote off-ticket, Senator Colbeck would have received sufficient votes to keep him in the count, collecting preferences from others. As it was, he almost did but went out just too early. His votes then elected Senator McKim. Had he stayed in the ballot, that would not have been the case. As for Senator Singh, who is the other terrific example in Tasmania, she did have sufficient votes to keep her in the count.

As a result of her election, the One Nation candidate in Tasmania did not get elected. She did not prevent the number five Labor candidate getting elected. Without her large personal vote, the Labor Party would only have received four. As it turned out, the one, two, three, four gets elected then the sixth Labor candidate. This is what you need to be looking at in the New South Wales Legislative Council. You allow voters to get outside the regimen of voting above the line, which directs preferences directly all the way down the line. It allows a broader range of votes, keeping everyone in the count. It is the way to go, otherwise they are all out and

then all you are doing is choosing which of the unpopular candidates gets in at the end. The system is reversed. Unpopular candidates should elect popular candidates. The New South Wales Legislative Council has the opposite. Popular candidates are electing unpopular candidates.

The CHAIR: Thank you very much for your evidence today. If we have any further questions, are you happy to receive them in writing over the next two weeks and then respond?

Mr LESSLIE: Yes, I am.

The CHAIR: Thank you very much.

(The witnesses withdrew)

(Short adjournment)

SERENA OVENS, Chief Executive Officer, Physical Disability Council NSW, affirmed and examined:

The CHAIR: In what capacity do you appear before us today?

Ms OVENS: As Chief Executive Officer of the Physical Disability Council NSW. I have to give my apologies. My policy officer who is far more aware of most of the information in this area has been taken to hospital this morning and is not able to sit in front of the panel.

The CHAIR: We note her apologies. Thank you very much for letting us know that. Before we proceed to questions, would you like to make an opening statement?

Ms OVENS: Just briefly. The Physical Disability Council [PDC] would only respond to most of the disability and access requirements of this inquiry. On that note we would like to commend the Committee for the procedures that have been put in place, especially in regards to the Disability Access to Democracy action plan.

Mr MARK TAYLOR: Can you describe some examples of challenges and requirements facing people with disabilities and voting?

Ms OVENS: There are obviously issues of physical access to polling places and the booths. I know that New South Wales has put evidence and information out about some polling places that are accessible, but obviously these are not all polling places and still present quite an issue for many people attending voting places. Some of the feedback that we received through surveys that we did post the election was that in terms of long waiting lines there was no access to shade or seating for people with disability when standing and stability is an issue. For others, there was no access to ramping, although we are aware that they probably did not attend an accessible polling place in that instance, but they may also not have had access to an accessible polling place in their particular rural environment.

The Hon. BEN FRANKLIN: I am particularly interested in regional access for those with a disability. Obviously in the city if you have got an electorate that is 10 or 20 square kilometres, it is relatively easy to go to a booth that is accessible three kilometres down the road. As Dr Phelps has quoted on a number of occasions, there are seats that are over 350,000 square kilometres. My question is twofold. First, do you have any specific concerns about there being greater impairment to access in regional booths? Secondly, would you support a recommendation whereby the Electoral Commissioner was required to ensure that there were more accessible booths available in regional areas because of the significantly increased distances? If you want to take the first part on notice, you are welcome to do so.

Ms OVENS: We certainly support the recommendation that there be more access to accessible booths within rural areas. Overall, when it comes to the rural areas of New South Wales in respect of disability as a whole, people have less access, even if it is down to being able to get accessible parking close to the polling booth. That was one of the concerns that was brought up by one of the individuals that responded to our survey post the 2015 election. For others it is literally about footpath access and level access into or close to the area that they need to get to for the particular polling place. We certainly would be happy to resurvey and get further information, particularly in the rural areas, on the sorts of information you would be looking for. Our members are generally supportive of assisting.

The Hon. Dr PETER PHELPS: Does your group include people who are blind and vision impaired under its umbrella?

Ms OVENS: We do.

The Hon. Dr PETER PHELPS: One of the problems that blind and vision-impaired people face is that under the old system the necessity of requiring a third party to ensure that their ballot paper was filled out correctly, there was, at an earlier Federal election, the ability to use headphones and literally your ballot paper would be spoken back to you and then you could confirm it and print it out. That has subsequently, because of cost issues, been removed. What do blind and vision-impaired people need (a) to feel sure that their vote is being cast correctly and (b) their vote is being cast with a level of privacy that non-vision impaired people need?

Ms OVENS: There would be a number of things. I suggest that iVote might be a better way of looking at the ability for a person with vision impairment to complete their vote. However, I am unaware fully as to whether or not the iVote system works with the speak-read scenario so that someone could access that process.

The Hon. Dr PETER PHELPS: That is my concern because on page 11 you indicate there was a lower than estimated usage by voters with vision impairment and other disabilities for iVoting. It strikes me as quite a remarkable situation that you have a system that is almost exactly suited as fit for purpose but it is not

being taken up. My question would be why would that not be the case? Are people just used to an old-fashioned dial-up system or is it the problem of the interface with the software?

Ms OVENS: The information we gave you was the Government's survey, and that was indicated—

The Hon. Dr PETER PHELPS: I thought you might have had some sort of internal mechanism feedback.

Ms OVENS: We have. In our survey we found that 60 per cent of people who responded said they were aware of the iVote system and 40 per cent were still not aware that it was available to them. In that respect, one of the things I would suggest is a great promotion of the iVoting system to allow people to know it is available for their use.

The Hon. Dr PETER PHELPS: Including the use of internal information networks in disability advocacy links?

Ms OVENS: Absolutely. We certainly broadcast them.

The Hon. Dr PETER PHELPS: Presumably you would have a pretty good database of the people that you could get to.

Ms OVENS: Certainly we have a membership database and a wider stakeholder database. We also have member organisations. We are not only the one organisation—a peak organisation in our area—we have access to another 70 organisations that we could pass that information on to. When you get down to the absolute specifics about vision impairment and the iVote system I would refer you to Blind Citizens Australia or one of the specific blind peaks to give you greater ideas as to the access requirements for a particular piece of software.

The Hon. Dr PETER PHELPS: I will follow up on that a little further. As much as we would like to have it, it is impractical to have a computer and headphone arrangement at every polling booth in New South Wales. Would it be the view of your group that it would be preferable, for example, at pre-poll centres, in the two weeks leading up to an election, to have an arrangement like that. Perhaps even on polling day, would it be preferable to have an allocated spot within a particular electorate where the blind or vision-impaired person could go and be able to exercise his or her vote securely and privately?

Ms OVENS: Yes, I think it would be very advantageous to be able to do that at a percentage of places and, again, have that broadcast so people knew where they could go to access that.

Mr ADAM CROUCH: In the submission you commented on the NSW Electoral Commission's Access to Democracy 2014-2016 Disability Action Plan. However, you also identified ways in which it could be improved. Were you consulted during the drafting of that plan?

Ms OVENS: Yes, we sit on the reference group. So we are consulted in the access and disability action planning process.

Mr ADAM CROUCH: Are you aware of the measures used in other jurisdictions? If so, were they successful, and could you share with the Committee that feedback from other States and Territories.

Ms OVENS: I cannot comment on measures used in other jurisdictions. However, we would be looking for specific strategies around ensuring that there were actual identified actions and resources put in place in line with that. We would want to ensure that there was a department identified as responsible for implementing the actions that were required, specific milestones and key performance indicators, so that there were also some figures that could be followed up on, post-election, to ensure that things were increasing. Specifically, if you look at one of the goals—I think it is goal 5 or 6, which talks about employing people with disability in polling scenarios and election procedures—you will see that having a baseline and performance indicators on whether we are increasing the capacity of people to be employed in that situation would give us the ability to see how we are improving and what actions we need to take to improve those numbers and statistics.

The Hon. PETER PRIMROSE: On page 9 of your submission you state that the NSW Electoral Commission needs to ensure that it understands the different needs of people with disabilities. Could you describe or give some examples of the different challenges? I know that that question has been raised already but I am thinking not only of the polling place itself. As someone who for many years has stood outside the polling booths, I am aware that there are issues to do with car parking and there are a whole range of issues that would affect people with particular physical disabilities in addition to those who are blind or have hearing impairments. Could you run through some of those and how the challenges could be met—particularly as polling places are often schools and community halls?

Ms OVENS: I think you have picked up on some of the physical access issues—car parking close to or within the venue is an issue. There should be physical ramps to get into the venues, as well as footpaths or areas wide enough to allow access. One of the comments that we had in feedback on the last election was about the number of people outside the venues—party representatives with paperwork, et cetera, that they are trying to give to people which decreases the space available for movement for people with disability to get into the venue. Even prior to accessing the venue the information, the way that we provide it and the formats—in regard to ensuring that there is easy read information for people with intellectual disabilities and information in braille and Auslan that can be screen read—can address all the different types of disability. Account needs to be taken of culturally and linguistically diverse [CALD] people as well, ensuring that we have information available in other languages.

We also need to take into consideration the fact that some people have multiple issues. They might not only have a disability but might have an Indigenous background or a CALD background, where there are secondary factors. Inside the venues we still found that people had limited access to bathrooms. Some places did not have access to bathrooms and some did, but in some places access might have been covered by tables and booths, et cetera, limiting a person's ability to get to a bathroom in use. However, there are other people with disability that say, given the sort of scenario where they are coming in and leaving quite quickly, that need may not be the biggest concern for them, whereas if they were going to a restaurant and they would be there for a number of hours that would be a bigger concern for them.

The Hon. PETER PRIMROSE: Once people have made it into a booth—I will use the example of someone with a hearing impairment—and they were then advised that they needed to provide photo identification, do you think that that would be an acceptable additional layer of concern for those people or for your organisation?

Ms OVENS: I think that that would be a very individual thing. Some people would have no concern about providing that documentation. Others might feel that it was an extra step that was not required for anyone else and not fair, realistically, to have to do that—

The CHAIR: Just to clarify, I think Mr Primrose is talking about photo ID. One of the considerations of this Committee is whether we go to a system where we required some form of identification for all voters, regardless of mobility. I think it is in that context that Mr Primrose is asking that question.

The Hon. PETER PRIMROSE: Yes.

The CHAIR: It is not just for people with mobility issues and disabilities but for everybody.

Ms OVENS: It is not something that I have thought about at all so I hesitate to comment on it.

The Hon. PETER PRIMROSE: Could you take that question on notice? I am thinking about people with intellectual disabilities. Also, earlier on, the communication issue was raised with respect to community languages. It would seem to me that if you are requiring people to provide photo ID—and then explain why they needed to provide it and what they needed to provide—there may be unique issues for people with particular disabilities in being able to have that communication at a polling place. Please take that question on notice. I would welcome any comments that you may have.

The Hon. BEN FRANKLIN: I have a couple of questions. First, I want to go back to the issue of physical access to polling booths. You would be aware, I am sure, that in the couple of weeks in the run-up to an election there are pre-poll booths—a small number of booths in each electorate where people can cast votes early. I noted in the recent Federal election that at the pre-poll booth in Ballina there was a step, and so it was inaccessible for those in wheelchairs and with significant physical disability. Would you support a recommendation that it is mandated that all pre-poll booths must be accessible to those with a disability or with wheelchairs?

Ms OVENS: Very much so, yes.

The Hon. BEN FRANKLIN: Thank you. The second thing is that you mentioned earlier Indigenous communities. I note in your recommendation on page 10 you refer to a higher incidence of disability among those from Aboriginal and Torres Strait Islander communities. I wonder if you could speak a little bit more about that issue and the problems or the extra challenges that creates in terms of the electoral system, and any recommendations you have that specifically might be able to address that?

Ms OVENS: The Physical Disability Council [PDC] would not consider themselves the expert in the Indigenous population. There is certainly the First Peoples Disability Network that would be able to give you greater assistance. There certainly is a much higher percentage of people with disability who also consider themselves or classify as Indigenous. Some of the issues would be around the rural and remoteness of where

they are located in the first place and accessing a polling booth to begin with. Others would be about the level of understanding, and the information that was provided perhaps would not be appropriate in terms of being able to understand their rights to vote and how they would go about that. It would be about ensuring that we could ensure that information is provided to community elders and more time is given for it to be digested and devolved within the way they work as a mob and the way in which they use their own community to develop understanding.

The Hon. BEN FRANKLIN: Fundamentally, they need greater access and greater education.

Ms OVENS: Yes.

The Hon. Dr PETER PHELPS: Have you had feedback from your members in relation to the size of the font on ballot papers and the ability to read? I ask this within the context of a broader debate we have been having on the size of the Legislative Council ballot paper and evidence we have received that, if there were more people who wanted to run for the Legislative Council, in lieu of creating a bedsheet-sized ballot paper, we would have to reduce the font size further. Have you received concerns that the size of the font on ballot papers is small? Would you be concerned if it were to be reduced even further?

Ms OVENS: I do not have a disability and I find it difficult. Obviously, it would depend on each individual person. Some people with disability have absolutely no problem with eyesight; others do. Some people do not have any problem with understanding and others need information provided in easier, more readable and understandable formats to gain the knowledge.

The Hon. Dr PETER PHELPS: But concerns cannot be waved away that the size of the font of a ballot paper is irrelevant.

Ms OVENS: No, absolutely not. Either you would have to provide a secondary document that was of a larger format or perhaps additional pages to cover the group of people that would need it in that format, or provide it in a different format online, perhaps, that could be read out as opposed to physically viewed.

The Hon. Dr PETER PHELPS: We are actually looking at an alternative option, but it is good to know that font size is an important consideration for people to be able to validly exercise their vote.

Ms OVENS: But for some people it is not just the vision impairment. There are some disabilities where reading becomes problematic anyway, and having it on a piece of paper that is not necessarily a white background can make it easier for them to actually read the document.

The CHAIR: One of the things that happened at the Federal election is the introduction of logos as well as party name and candidate that would provide another alternative for people to be able to identify who they want to vote for. Would that be helpful at a State election?

Ms OVENS: Probably particularly helpful for people with an intellectual disability where it might be easier to recognise the symbol of a party than the written language itself.

The Hon. COURTNEY HOUSSOS: I, too, wanted to discuss the intersection of people with a disability and also people from culturally and linguistically diverse [CALD] communities. The Electoral Commission often employs people at particular polling places who speak a second language, which is useful, but the evidence we received this morning is that it would be useful if that was actually communicated more broadly and outlined somewhere. Do you think that would be useful for people with disability, particularly when they intersect with CALD communities?

Ms OVENS: Always. The more information we can give people prior to the election itself, as to where they can access the additional assistance, would always help.

The CHAIR: Are there any more questions? No. Is there any other information you wanted to leave with us?

Ms OVENS: I would just go back to our survey. I think most things have been answered and addressed. What we found from the survey, as we said, is that there is still quite a lack of information about the iVote system. We feel that is a very positive system for many people with a disability, but equally people need to be aware that in putting the iVote system in place and expecting that to be the be-all and end-all for people with disability, it is not necessarily the case. For inclusion purposes, some people prefer to be able to go out and vote in the voting place with the rest of the community, and not be isolated within their homes and having to do it that way. Obviously, choice and control are really important for anybody, and not to just assume that that is the only way that we should do things in the future.

The Hon. Dr PETER PHELPS: On that point, do you have anecdotal or, even better if you have it, statistical evidence—but I will accept anecdotal—on the sort of numbers of people who just say, even with all the things we have done, "It's just still too difficult. We can't be bothered going voting because our particular disabilities are not catered for. It's just too difficult."

Ms OVENS: Not specific evidence.

The CHAIR: Thank you very much for appearing before the Committee today. You did well for a first time, so thank you very much. I told you they would not bite.

Ms OVENS: After the people before, I was not so sure.

The CHAIR: If we have any further questions, do you mind if we send them to you over the next couple of weeks for you to respond in writing?

Ms OVENS: You are more than welcome, and if there are things that you would like us to follow up on to get specific evidence, we are more than happy to try. Sometimes we get a response and sometimes we do not get as much buy-in as we would like, but we always put it out there for general feedback.

The CHAIR: Thank you very much. The offer is always open, if there is any other information you want to provide at any time, to send that to this Committee. We would be more than happy to receive that as well.

(The witness withdrew)

LACHLAN JAMES CAMPBELL, Director, Scytl Australia Limited, sworn and examined

The CHAIR: Thank you for appearing before us today. Before we commence, are there any questions in relation to any information that has been sent to you, particularly around procedural matters?

Mr CAMPBELL: No questions.

The CHAIR: Thank you very much. In what capacity do you appear before us today?

Mr CAMPBELL: I am Sam Campbell. I am the local director of Scytl Australia. We provided the iVote system during the last election.

The CHAIR: Before we proceed to questions, would you like to make an opening statement?

Mr CAMPBELL: Yes, I would like to make an opening statement. Thank you all for the opportunity to be here today and meet the Committee. As with the last speaker, it is my first time.

The CHAIR: That is all right. I will make sure they do not bite you as well, but they might have some questions.

Mr CAMPBELL: All right, and I will do my best to attempt to address them. I represent Scytl Australia, which is a subsidiary of Scytl Secure Electronic Voting, which is a company based in Barcelona in Spain. Scytl has been involved extensively in electoral projects involving electronic and internet voting since 2001 as well as other electoral services. Scytl has an extensive research and development team who focus on election security and cryptographic protocols and their application. Scytl was awarded the contract to provide the iVote service in 2014 for the 2015 election. Speaking of awards, I would like to acknowledge the New South Wales Electoral Commission for receiving the Excellence in eGovernment Award for the category of service delivery for the iVote system, which was recently awarded by the Federal Government for the Australian Government ICT Awards for that system.

Scytl has implemented projects in a number of countries. These projects include such programs that helped the French Ministry for Foreign Affairs with five elections since 2009 on their system. Another project is an ongoing implementation of the Swiss Canton of Neuchâtel covering elections, referendums and citizen consultation since 2004. Those works are still ongoing and have been extended to other areas of Switzerland as well. Scytl performed an online election for voters in some counties of the United States. Scytl has also supplied the election platform in Norway, in 2011 and 2013, as well as various projects in Australia. There are many others on top of those.

By providing the iVote system for the 2015 State election, the Electoral Commission was able to maximise the voting franchise by extending the voting process to be within easier reach of those people in the targeted groups—the blind, those far from a polling booth, those with disabilities and accessibility requirements, in short those who would otherwise not have been able to have a private, secure voting experience that is available to the regular voter. I have received letters of thanks over the years from the different projects I have been involved in, from blind voters who have said that it was the only time they have had what they described as a private voting experience.

Voting has a number of risks associated with it. There is the risk that a ballot is lost; there is the risk that a voter is coerced; there is the risk that a ballot is not put into the ballot box; and there are many, many others. The staff associated with the ballot box are to be trusted and they are expected to act honourably, and in general they do. They are also expected to make no mistakes in their assigned tasks, and there are many different tasks to be performed throughout the electoral process. Each of these tasks is a risk, and they describe the reality of the existing paper voting system. The risks are real, and failures happen, as we have seen locally and internationally over the years. Mistakes are generally low in number but are the reality of many paper-based systems; this is not an electoral problem, but humans doing their jobs.

The paper system is not perfect. However, the iVote system has an audit and record behind it, which differentiates it. It is Scytl's view that the risks associated with internet voting, when it is correctly and appropriately implemented, are lower than those associated with paper-based voting. That is not to say a switch from paper to electronic is a good approach. Voters in the Electoral Commission's experience take time to learn new processes, adapt them and understand. There are those against internet voting who say that internet voting should not be done until it is perfect. Maybe we should stop using the paper system—it is not perfect, but that is not going to happen. There have been many years of learning around the paper-based system and many things have been taken in to improve it.

To understand the risks around electronic voting, people need to not hide from them and continue with projects such as the one in New South Wales, where it is a requirement and information is gathered to improve

the system every time. Using internet voting to capture the difficult votes, to help those who cannot vote in privacy as others can, is a good and safe way to embrace the technology and assist the commission to deliver a franchise. Running an election involves taking and managing the risks. The papers come in from foreign countries that do not make it prior to the closing date and may be rejected. There is a risk that this will impact the result. Increasing costs of postage will take an increasing chunk of the electoral budget. From what we are seeing happening worldwide to postage organisations, this is a financial risk that will be managed over time.

These risks can be weighed against the risk that a young person will feel alienated. Many leave school used to using computers—that is their interaction with society, and yet we put a pen or pencil in their hand and ask them to vote. Some young people find that unusual. Learning to work with the risks involved with electronic voting is the responsibility of the Government, and one which we are increasingly seeing being taken on, as we have seen in New South Wales. The collection of over 280,000 votes in New South Wales, which was the world's largest internet delivered binding government election, shows that there are lots of voters out there who do want this.

I would like to encourage the Committee to look at extending the use of the iVote system. It is a truly valuable asset that New South Wales has and it will fit well for the delivery of other elections. A prime example would be the local council elections, which are coming. Obviously, it is too late to look at that, but that is the sort of thing that we believe could be a return on the State's investment. Scytal appreciates the confidence that the NSW Electoral Commission displayed by engaging us to implement the iVote system.

The CHAIR: Thank you. I know many Committee members have questions and I remind them that I promised Mr Campbell that no-one would bite him.

The Hon. ROBERT BORSAK: Do you see the iVote project within the NSW Electoral Commission expanding and, if it does, into what areas?

Mr CAMPBELL: I would like to see it expand. I think there has been a worthwhile investment by the State in the system. It has obviously been conducted over a couple of cycles now, and the Electoral Commission has knowledge of the running of electronic elections and using that knowledge could look to extending it into other areas. Other areas might be the other ballots that the Electoral Commission might run—for instance, protected ballots and those sorts of things—or it might look to council elections. I understand a council election in New South Wales is largely driven by postal ballot, which has a fairly equivalent security model to an electronic ballot.

The Hon. ROBERT BORSAK: It can be either or. You talk about expanding. Do you think that the recent experience in the last State election, which is what we are here to talk about, was good grounding for taking the project to another stage or level?

Mr CAMPBELL: I think it was a good project in that a number of parties were involved in it. A lot of data was collected by the Electoral Commission, I believe. That can be used to determine the strength of that system and also where it might not be applicable. There were some extensions to the system that were looked at during the election, at that stage, one of which was looking at collecting, say, a declaration vote in a voting location and how that might be used over time. In the paper voting system, when someone votes out of the area electorate, an envelope is passed around with that vote, and then they will all move to the final location for counting, which introduces logistics and a bit of risk. That is an area that might be looked at being done electronically within the polling centre, which would be an extension of the system without necessarily increasing network-related risk from the internet.

The Hon. ROBERT BORSAK: In your submission you deal with two major outages—you might argue whether or not they are major, but political parties find it a problem when boxes do not appear on the ballot paper. You talk about the EML data file. Please explain what EML means.

Mr CAMPBELL: EML is the extensible mark-up language. It is a data format file that is used to contain the data from the election—for instance, the names of the candidates and groups that they fall under. That EML file was considered a source of the data for running the election. When you take that file, it was taken to the printer and that file contains the layout of the ballot paper. The process was that that file would go to the printers and to the Scytal system together, so they would receive the same data file. When that process happened, it is my understanding that in the ballot proofing process someone detected an issue with the ballot proofing after the paper print and corrected the paper print, but that did not correct the original data file that came to our system.

Mr ADAM CROUCH: Was the data file from the Electoral Commission being checked, not Scytal?

Mr CAMPBELL: The supply of that data file does not come from us. I believe that it is with them. There are a number of parties involved in the project. That data file came to us and then it became clear that there was an issue. That file was then corrected and Scytl was consulted as to the easiest way to put that into place. We do not actually drive the system, so we provided feedback as to how they would do that.

The Hon. ROBERT BORSAK: I can understand why you would not want to point a finger at anybody, Mr Campbell. I think it is a pretty good contract with the NSW Electoral Commission. I am not suggesting for one moment that you should do that. There is another acronym in your submission, EMA. What is that?

Mr CAMPBELL: EMA is an internal NSW system. I will have to take that on notice.

The Hon. ROBERT BORSAK: Take it on notice and let us know.

Mr CAMPBELL: It is not the iVote system. It is among the IT systems that make up the Electoral Commission.

The Hon. ROBERT BORSAK: On page five you spoke of outage number one and the failure of the EML data file was something outside your control.

Mr CAMPBELL: Yes.

The Hon. ROBERT BORSAK: It was within the control of whoever does electronic data control management in the Electoral Commission. You were saying that there was a failure of the merger between the two systems based on a lack of controls around coordination of paper and file updates.

Mr CAMPBELL: When we were first aware there was an issue the first question was, "Is the issue on the paper ballot as well?" because it has the same source data file; and the rest flowed from there.

The Hon. ROBERT BORSAK: Would you, as a systems person, prefer control of the process from A to Z? In other words, you deliver the full solution rather than have someone from the bureaucracy controlling part of that process?

Mr CAMPBELL: That data file that creates the election is a seed of many systems within the Electoral Commission, not just iVote. It deals with the print and overall running of the election. To say that would be to say we would run the overall election, which was not our scope for this.

The Hon. ROBERT BORSAK: Would you characterise your software, as it relates to collecting, collating, interpreting and distributing votes as mission critical to the voting process? Are we paying you enough money to make it mission critical?

Mr CAMPBELL: It is collecting about 5 per cent of the votes, so I do so I do not think you would call it mission critical-think you would call it mission critical.

The Hon. ROBERT BORSAK: For the missions you outline and are currently contracted to deliver on?

Mr CAMPBELL: They are mission critical for those establishments, yes, and they are very important pieces of business.

The Hon. ROBERT BORSAK: When the iVote system, but it may not be the iVote system based on what you say here, failed in remote locations, for whatever reason, it was not the iVote system itself?

Mr CAMPBELL: "Failed in remote locations"?

The Hon. ROBERT BORSAK: You did not say that, I am saying that. It failed on a number of occasions to deliver results for people using remote area access on iPhones and other handheld devices. Would you say that is not a failure of the iVote system?

Mr CAMPBELL: I am not aware of the specific thing you are referring to. If someone is in a remote location and they are having a network issue that will be related to the network. We are providing an application that sits within a data centre hosted by government.

The Hon. ROBERT BORSAK: It does not relate to your product? It does not relate to the services you are delivering to the NSW Electoral Commission.

Mr CAMPBELL: Correct. We have discussions with them about different risk scenarios and what things we might do to assist.

The Hon. ROBERT BORSAK: What is your view about use of the internet for delivery of your product by the Electoral Commission?

Mr CAMPBELL: The use of the internet to deliver the product means that people who cannot otherwise vote can vote. If you are travelling and you are in the United Kingdom, if you are specifically in London you can attend the polling place that is in London, but if you are not actually in London you need to go to a postal vote which does have issues with latency, which means your best available solution is to use a network-based solution. So an internet approach to that helps.

The Hon. ROBERT BORSAK: How can we be confident that will be secure?

Mr CAMPBELL: We have not gone fully into the protocol about how the application works in the submission, however, that is on the New South Wales website. That talks about the security and the process around the protection of the ballot and how that ballot is protected from when you cast the ballot on the device to when it comes out the other end at the digital ballot box. You can gain a level of comfort that your vote was recorded. There are different processes within the system. For instance, you could dial a verification server and listen to your vote and determine that the vote you cast on your device, when you check on a landline phone, that the ballot was recorded the way you intended.

The Hon. ROBERT BORSAK: Your encryption protocols are good enough that no-one can get in between there and break your code and substitute a vote?

Mr CAMPBELL: Yes.

The CHAIR: Can your system be hacked?

Mr CAMPBELL: It would be very difficult. As far as we can determine—

The Hon. Dr PETER PHELPS: Very difficult by whose level of ability?

Mr CAMPBELL: I was part way through the sentence. To hack the system without detection is the risk. Someone could try and hack the system. It was clear from presentations given over the last year that many people did try and hack the system and there have been slides in presentations done by the previous chief information officer [CIO] about the iVote system where there are demonstrations of people trying to penetrate the system. That could be monitored by the companies responsible for monitoring the network devices. They could watch those people prod and probe away and deactivate those people and keep them away from the system. The way to actually have confidence that the vote is recorded is that someone can check their vote and see that the vote they recorded was there. If they were to say that the vote they recorded was not what we expect then that would raise a red flag and there would be discussion and investigation around that.

The Hon. PETER PRIMROSE: Following on from that, we have heard evidence and received a submission from Dr Teague and Professor Gore, which I am sure you are aware of. If their allegations were correct would you be concerned about the integrity of the system?

Mr CAMPBELL: If their allegations were correct—I am trying to think of the specific allegations.

The Hon. PETER PRIMROSE: They spoke of the vulnerability in relation to the system being leveraged for multiple votes, violating ballot privacy and subverting verification. The first question is: if their allegations were correct would you be concerned, and the second question is, do you have any specific comments on their allegations?

Mr CAMPBELL: Their allegations do not appear to be correct. The system has a number of protections within it which are described on the New South Wales documentation. But ultimately you have the ability to check your vote and you have the ability at the end of the election to validate the votes are the same between what we call a verification system and voting system. Someone would have to manipulate multiple systems in an undetected fashion to enable that to happen. There is substantial amount of monitoring that goes on on those systems as well as what we call our cryptographic logs. It is normal for a computer system to maintain logs. The risk with logs is that someone removes a log and you cannot see the effect. However we cryptographically sign and chain our logs which means if someone removes the log afterwards we might not see what they did but we will see that it happened. We will know the logs are inconsistent. There might not be data but there is evidence that something happened. That triggers the discussion. As far as we are aware none of those situations occurred.

The CHAIR: I will ask you to take on notice to comprehensively write back to this Committee specifically on the allegations raised by Dr Teague and Professor Gore.

The Hon. PETER PRIMROSE: And anything raised today.

Mr CAMPBELL: Absolutely.

The Hon. Dr PETER PHELPS: Can you provide any data as to what percentage of voters sought validation of the vote subsequent to the casting of it?

Mr CAMPBELL: As I mentioned before, we do not run the system, we do not get our hands on the console, so we do not see the data. I know at some stage I looked at some of the public data around that. That is a question for the commission.

The Hon. Dr PETER PHELPS: The mere fact that a person has the ability to seek validation of their vote does not indicate how many sought to do that and if they did not seek to do that there is no way you can make a reasonable assessment of the validity of the system. Presumably the Electoral Commission does not have the ability to check how an individual voter voted because that would violate their privacy, and if individuals do not do it there effectively is no oversight of the purported vote and the vote as recorded.

Mr CAMPBELL: I do recall around the time of the election, it is a while ago now, that we would all have liked to see more people use the verification service. It would be something that Scytl would look at and we have talked about this within our company, that part of our suggestions to our customers is to advertise that as part of the service so they do get taken up on these verification services.

The Hon. Dr PETER PHELPS: In that instance, is there an ability to make a mandatory push out so that automatic validation is sent in every instance to the person who has exercised an iVote?

Mr CAMPBELL: The verification occurs because they choose to make a phone call. To push out would mean calling them, and if someone else answered and heard the vote that might be an interesting situation that we would prefer to avoid.

Mr ADAM CROUCH: I understand that the validation information is only supplied to the Electoral Commission. Am I right in assuming that? If someone takes the option to ring up and check that their vote is correct, if it is not correct the commission would be notified and it would contact Scytl. Is that the way it would work?

Mr CAMPBELL: I would expect that the commission would investigate fully and then call on us if it chose or needed to. It has access to the logs and information. It is fair to say that the commission was closely involved in the iVote system. The proposal that went to market described the iVote system and that was implemented. The commission knows full well how those things work and it has all that information. The controls are there for the provider of the system to manage that information.

Mr ADAM CROUCH: You mentioned the requirement to look at every iVote and having a mechanism whereby the votes are checked. I am trying to establish whether I, as Adam Crouch, chose to iVote, rather than having the option to check my vote by telephone, it becomes automatic. For me to validate my vote, I have to call and check that it is correct. Is that how it would work?

The Hon. Dr PETER PHELPS: I think that is even worse, because that would involve double handling at that point.

Mr ADAM CROUCH: We are talking about the validation of the system.

The Hon. Dr PETER PHELPS: I do something, I send it in, and I then get a call asking whether I sent it.

Mr ADAM CROUCH: I am talking about the actual voter validating their own vote.

The Hon. Dr PETER PHELPS: Presumably they are validating it in the first instance when they hit the submit button.

Mr CAMPBELL: I have not sat in front of the interface for a while, but you cast your vote and it comes back and shows what you have voted and you confirm that that is what you want to do. You then hit submit. It is a two-stage process. Since the first election in which I was involved with Scytl that has been a fundamental part of the software. There is always a selection process and a review of what you do. There is then a confirmation screen showing what you want to do and then a submission process.

The Hon. ROBERT BORSAK: I refer to the question of audit trails and, flowing from that, scrutineering. How extensive is the audit trail in tracking the actual vote within the iVote system?

Mr CAMPBELL: The audit trail is intended to record critical steps in the process. I do not have the full information about what was tracked, but I believe that is on the New South Wales website. Ultimately, we track that someone connects to the system, a vote is recorded, and the user is struck off. There is nothing about

what is within the vote; the vote itself is contained within its cryptographic envelope and that is stored in the database of the system.

The Hon. ROBERT BORSAK: Does your system allow for third-party accessing for scrutineering purposes?

Mr CAMPBELL: We would have to look at exactly what that means. For instance, in New South Wales, Scytl generated a piece of software that went through some audit processes internally conducted by Scytl and also by the commission. I believe the commission contracted other agencies to review the application, to go through it, and to make themselves comfortable. I believe there were reports and there was feedback to Scytl about that process.

The Hon. ROBERT BORSAK: I am talking about ballot count scrutineering.

Mr CAMPBELL: Because it is an IT system, having some knowledge of the working of the system will obviously help that process. A more practical process was introduced by the Electoral Commission. I mentioned that the system has the two components—the electronic ballot box and the verification system. There is a verification process where the contents of those components are validated to confirm that they are the same. That was the done with some interested parties who participated in the process. To be able to do that they needed to look at how the system worked and then write their own application that would look at the two datasets and confirm that they were the same.

The Hon. COURTNEY HOUSSOS: Who were the interested parties?

Mr CAMPBELL: I cannot recall. I will take that question on notice.

The Hon. COURTNEY HOUSSOS: Who selected the interested parties and what was the process for establishing who they should be?

Mr CAMPBELL: I will take that question on notice.

The Hon. ROBERT BORSAK: It is not unusual for audit software to be written by, for example, accounting firms to run through large and complex online and real-time systems in parallel with those systems, is it?

Mr CAMPBELL: I am not overly familiar with some of those systems, but that sounds reasonable.

The Hon. ROBERT BORSAK: Did the Electoral Commission ask you for that sort of capability or request it in the specifications?

Mr CAMPBELL: The specifications tell us what sorts of logs to keep. They are produced by the system and they are kept on the system. They are also sent out to an external monitoring system in real time, so that external system would be aware of what is going on in the iVote system.

The Hon. ROBERT BORSAK: The external system might be some place where some other software is running and monitoring in real time and then probably subsequently doing checks on the controls within the system.

Mr CAMPBELL: Yes. Monitoring was going on within the project. A key metric was the use of the system, how hard it was being hit at a point in time, and those other aspects that I mentioned before, that is, people trying to hack into the system. To be able to get that information, the real-time system was monitored, effectively like heartbeat monitoring, with the log being externally exported for review and analysis.

The Hon. ROBERT BORSAK: I am not criticising the commissioner or the commission, but it has been very keen on promoting the iVote system, starting with supporting people with impaired vision and disabilities. The implication from the commissioner at one of our more recent hearings was that he would like to see this roll out into the general public voting arrangements. I have always had a question mark in my head not so much about that but more do with the two issues we are talking about; that is, the security of the vote and the subsequent ability for political parties to ensure that their vote—but it is not limited to—is being properly recorded and tallied. It seems to me that not a lot of—I want to choose my words carefully—detailed specification work has been done in that latter area. In other words, the parties are being asked to take it on trust. Does that characterisation make any sense to you? If I am wrong, please tell me.

Mr CAMPBELL: I cannot speak as to who did the final verification. I used the term "interested parties", but my understanding is that there was a process and people could apply to be involved. As part of the use of the system, Scytl and the Electoral Commission had early discussions about the view that people should be able to examine it.

The Hon. ROBERT BORSAK: I might be corrected by other members, but I am not aware of any party that was invited to scrutinise the system at that detailed level.

The Hon. COURTNEY HOUSSOS: When you say that interested parties were able to scrutinise the verification system, was that the final pressing of the button on election night?

Mr CAMPBELL: We collect two sets of votes—that is, the ballot box and the verification system—the following day, and a process then verifies that the ballot that went into the count matches the vote that people have validated. I believe that process happened on the Sunday night, although I can check that timing.

The Hon. ROBERT BORSAK: I have a lot more questions I could ask about that but I am not going to go any further. I will give someone else a go. What is the Piwik service? It looks like some sort of plug-in.

Mr CAMPBELL: The Piwik service is a service that sits on the internet and you can plug it into an application and do monitoring of that application for performance purposes—for instance, to see how long someone is on a page. It does not see what is on the page but it can say, "The person went from page one to page two," and that sort of thing.

The Hon. ROBERT BORSAK: So someone somewhere identified it as a potential problem when the Electoral Commission engaged that piece of software or that process and then sought to back away from using it. Do you know if it was actually engaged in the live system?

Mr CAMPBELL: Yes. The Piwik service was part of the Vanessa Teague document, I believe. They did not find that the Piwik service itself was the risk; they found that the communication with the Piwik server was what contained the potential hack that they had found.

The Hon. ROBERT BORSAK: So someone could have come in through that service.

Mr CAMPBELL: That is their view. The use of the Piwik service was not in the original design as it was eventually fleshed out.

The Hon. ROBERT BORSAK: Whose design? Was it yours or that of the Electoral Commission? **Mr**

CAMPBELL: The iVote system. The iVote system is a standalone server which collects votes. **The**

Hon. Dr PETER PHELPS: Is your assertion that the Electoral Commission's addition of Piwik compromised the integrity of the iVote system which you had designed?

Mr CAMPBELL: The way in which Piwik was introduced into the server did introduce a weakness. That has been stated by the Electoral Commission over the last year in a presentation—that that should not have been activated at that stage in that manner. We did look earlier to host it on our server but given the time to actually deploy a project and to prepare for an election that service was turned off earlier on.

The Hon. BEN FRANKLIN: And it was the Electoral Commission's decision to introduce it.

Mr CAMPBELL: In the way that it was introduced—yes.

The Hon. Dr PETER PHELPS: To follow on from the issue of Piwik, you say in your submission that it was a threat based on the probability of communication infrastructure components being compromised. What is the likelihood that communication infrastructure components could be compromised in such a way?

Mr CAMPBELL: That is a very difficult question to answer. People terrified of internet voting might suggest it is fairly easy, but we would say it is challenging. An example would be, for us, if someone was in a coffee shop and they were using the free wireless in the coffee shop and chose to vote that way, if someone broke into that network channel at that point then they could intercept that person's vote. So there is the risk.

The Hon. Dr PETER PHELPS: What level of technical sophistication would be required to do that?

Mr CAMPBELL: At that stage that was only a recently released bug, I understand. However, I need to take that question on notice. We consider it a difficult problem.

The Hon. Dr PETER PHELPS: Difficult for a person of knowledgeable but not exceptional IT ability?

Mr CAMPBELL: I believe so.

The Hon. Dr PETER PHELPS: Okay. Would Anonymous be able to do it?

Mr CAMPBELL: That is probably a question for Anonymous.

The Hon. Dr PETER PHELPS: Would Unit 61398 of the Chinese People's Liberation Army be able to do it?

Mr CAMPBELL: If they are sitting in that coffee shop they might intercept that vote.

The Hon. Dr PETER PHELPS: So there would be no ability other than direct physical proximity to the communicating device for it to be compromised.

Mr CAMPBELL: There may be other ways but—

The Hon. Dr PETER PHELPS: But we do not know.

Mr CAMPBELL: It is a while since I have had a look at this specific problem. At the time we were made aware of the problem—

The Hon. PETER PRIMROSE: Particularly as we have a generation now who are so uncomfortable with using pencils but they are totally competent and interested in computer applications.

Mr CAMPBELL: If we are looking at the person in the coffee shop, this is the equivalent of them putting a letter in the mailbox and someone opening the mailbox, changing the vote and moving it on. That is what we are looking at there. When the issue became clear to Scytl, Scytl gave some advice. New South Wales did their own investigation and that service was deactivated hours later. The original design did not include that, in which case the system would not have been exposed to this.

The Hon. Dr PETER PHELPS: Do you also provide the counting software for the Legislative Council ballot?

Mr CAMPBELL: We do not provide counting software to New South Wales.

The Hon. Dr PETER PHELPS: You mentioned that the effectiveness of scrutineering—and I do not mean to put words in your mouth but I think I heard it correctly—would be improved if scrutineers have some working knowledge of the systems being undertaken. Would that include the public disclosure of the source code of iVote?

Mr CAMPBELL: The public disclosure of the source code of iVote has been the subject of discussion along with electronic voting systems for some time. In Norway Scytl released the source code for that system. Scytl was the provider to Norway and that was posted on a public website from which people could download it. Our understanding is that there was not a lot of take-up of that service. We have found that when someone is paid by a customer or by others to examine the application they go through it with a level of care and interest and report back what they find for the improvement of the product. When it is put up on a public website as open source then we do not know that the information found that there might be a weakness will make it back to the Government or to Scytl. It might be used by those people—like Anonymous or someone else—

Mr ADAM CROUCH: Could releasing the source code potentially increase the risk of a vulnerability?

Mr CAMPBELL: We see that as a possibility.

The Hon. Dr PETER PHELPS: But that goes against what might be described as the current theme in a lot of administrative openness in this day and age and that is that more eyes are better—that, if you like, sunlight is the best disinfectant.

Mr CAMPBELL: And that does make sense. For instance, if you look at, say, the Apache code which is what runs a lot of web servers around the world, there are many people who run this piece of software and it is a very well-known piece of open source software. It has been found to have bugs in it over time, hence the name Apache—it is built out of patches. But the interest there is that many people run the software, so many people have an interest in the fixing of that piece of software. When you look at a piece of internet voting software—for instance, the iVote software—if that was made open source Joe in the street may not have an interest in making sure that software is more secure. He might be more interested in his web server so he might look at that. Whereas the people who would actually download iVote and go through it with a fine-toothed comb looking to see who might have made an error somewhere and how they might exploit that may not coincide with the people who are going to report that information back to you.

The Hon. Dr PETER PHELPS: On that particular issue, what sort of internal quality assurance [QA] do you do in relation to source code? Do you seek external audit of it before it goes to the New South Wales Electoral Commission? What level of external auditing do you seek of your own code?

Mr CAMPBELL: We run multiple teams within Scytl. We have a team that produces the software and then we have a QA team and we have a research and development [R and D] team who then go through looking for threats and those sorts of activities. The software is generally then supplied to the customer and facilitated through that process to an independent reviewer or reviewers of some kind. New South Wales did go through this process and they did supply it to a number of people who went through the software. No approach by anyone to Scytl via New South Wales to look at source code has been rejected.

The CHAIR: Does Scytl have the ability to hack its own program?

The Hon. Dr PETER PHELPS: They are not going to tell you. If they do, they are going to patch it.

Mr CAMPBELL: No, we do not. The way the protocol is written is that your vote is contained within a secure ballot in a secure envelope and that secure envelope has keys that are split between multiple people. To open the ballot requires multiple people to go into a room with their smart cards and these are generally spread out throughout the Electoral Commission. They will go into that room together as a unit, download the ballot box and unload the ballot box. The ballot is then unlocked so the information is free. Without that key which is split between multiple cards which historically have been kept in multiple different safes—the keys do not exist—there is not actually a key anywhere during the running of the election. It is in components in different safes, which is a procedural process.

The CHAIR: And could you find a way that you could hack the formulation of the software?

Mr CAMPBELL: To do that would require no-one auditing our code, multiple points of failure within our own organisation and no interested parties prodding and poking at the software. We have had a number of—

The CHAIR: But if you wanted to put part of your team together to find those risks, could you do that and have you done it?

The Hon. Dr PETER PHELPS: Presumably that is what your QA people do, isn't it? They try to break it.

Mr CAMPBELL: The QA team do this, but our projects are reviewed independently by external people and we do that for that reason. We do not want to be able to sit there and say can Scytl modify its own software? We have other people who look at our source code and they make that judgement.

The Hon. COURTNEY HOUSSOS: In the case of the external review, are you talking about the PwC review?

Mr CAMPBELL: No. I do not entirely know its scope, but PwC were looking across the election and they had a look at this aspect, but the source code review went to source code specialists—people with interests in internet voting.

The Hon. COURTNEY HOUSSOS: Was that provided to the Electoral Commission?

Mr CAMPBELL: That was sourced by the Electoral Commission and provided to the Electoral Commission.

The CHAIR: Can we call them as witnesses?

Mr CAMPBELL: That would be a question for the Electoral Commission, but I assume so.

The Hon. COURTNEY HOUSSOS: Do they provide the external report back to you and to the Electoral Commission?

Mr CAMPBELL: We get a copy of things that they think we should address, or to provide feedback.

The Hon. COURTNEY HOUSSOS: But not the entire report?

Mr CAMPBELL: I believe we did receive the report. It is a while ago.

The Hon. COURTNEY HOUSSOS: I can talk to the Electoral Commission.

The CHAIR: For the benefit of the Hon. Dr Peter Phelps I will rephrase my question, "Can we call them as witnesses?" Would you have an objection if we called them as witnesses?

Mr CAMPBELL: No.

The Hon. Dr PETER PHELPS: One of the things that was raised by the academics was while the Legislative Council results of sampling were exactly replicable to the ultimate results, when a comparable system was used on the sampling for local government elections, because of the smaller number, you ended up

with different results based on sampling differences. Is that correct? If so, do we face a situation where people might be being elected where they were not actually, or they should not have been elected?

Mr CAMPBELL: Sorry, I have missed the question?

The Hon. Dr PETER PHELPS: Sorry, you do not do the count.

The CHAIR: Any further questions? Thank you very much for coming in today, Mr Campbell. We appreciate your evidence. As was indicated by many of the members, there are some follow-up questions that they would like to ask. Are you happy to respond to those questions within two weeks of receiving them?

Mr CAMPBELL: Yes. I do have one more comment I would like to make.

The CHAIR: Sure. If you would like to make a comment we are more than happy to hear it.

Mr CAMPBELL: I thought there would be a question on this and I held off on it before. In our submission we mentioned two outages. I was reading the media last week when Vanessa presented and I saw that she talked about a breaking of the lockdown of the system during the election. I went and looked at my report and that was not in there, so I had to go looking through to find out what she was referring to, because it struck me as unusual. The quote I had from the media is, "My question is who tested the update, who certified the update, who checked whether the update to the core voting system database did not have unintended consequences for accuracy?"

The Hon. Dr PETER PHELPS: That was the Thursday or Friday prior to Election Day?

Mr CAMPBELL: It was just prior to Election Day, so it was during the election period but just prior to Election Day. I saw this in the media and it caught my attention because I thought I do not recall doing a software update. I looked into that and looked at what we did at that stage. So the system is locked down in that it is locked away and it has very restricted access in that multiple people have to sign off and keys need to be removed from the safe to do that. Looking through that, there was no patch made to the system. There was a potential performance issue related to the speed at which the database was operating. So what was added to the database was an index, which does not change the data in the database; it changes the format around it. When that was performed, the Electoral Commission had all their normal processes and things like that around it, but the application was not touched and it was not changed. I thought I should pass that on because that is different to what I was reading in the other testimony.

The CHAIR: Thank you very much for appearing before the Committee today. No doubt we will send you some further questions.

Mr CAMPBELL: Thank you very much.

(The witness withdrew)

(Luncheon adjournment)

RODNEY SMITH, Senior Lecturer, Government and International Relations, University of Sydney, affirmed and examined

The CHAIR: In which capacity do you appear before us today?

Professor SMITH: I was asked to come along, I guess, because of my expertise in electoral systems generally, and the New South Wales electoral system.

The CHAIR: As an individual or as the University of Sydney?

Professor SMITH: I am not representing the views of the University of Sydney.

The Hon. BEN FRANKLIN: Go on!

The CHAIR: You are appearing in your capacity as an individual.

Professor SMITH: Correct.

The CHAIR: Before we proceed to questions do you have an opening statement you wish to give us?

Professor SMITH: I did not make a submission to the hearing so I am curious as to what you would like to ask me about.

The CHAIR: Do you have some observations?

Professor SMITH: I would like to make four or five brief observations about the election. The first concerns the SmartRoll and its possible marginal impact on turnout. It is about more people being enrolled but perhaps not necessarily knowing they are enrolled or perhaps not responding to that by voting. That strikes me as a possible issue of interest.

The second issue is the increase in what we might loosely call early voting. Up to over 20 per cent of voters did not wait until polling day to vote. That is consistent with trends in other jurisdictions—most recently in the Federal election. Again, that is a matter that I think this Committee might reflect upon, if it is not already. The third issue is an issue of voter identification. That is something on which I wrote a report for the New South Wales Electoral Commission in 2014. Now we have a number of ways of voting, and they all have different standards of voter identification. Whether those standards can, in some way, be reconciled, might be reflected upon.

The fourth observation has to do with the traditional pattern of informal voting, particularly in electorates with high culturally and linguistically diverse [CALD] or non-English speaking background [NESB] citizens. Given that that is a persistent issue, more resources may need to be directed at addressing that. The fifth observation is that the 2015 election was the first, since the post-1999 reforms to the upper House ballot paper, to see the election of a new party.

Since 1999 it had appeared that the party system, as a result of those changes, had stabilised. This was the first election since that time, when, as a result of preferences beyond the first preference—largely preferences being filled in above the line—we saw a member of the Legislative Council from a new party. That is an observation that the system in place for the Legislative Council has not entirely closed down the possibility of new bodies of opinion gaining enough votes—and, indeed, second or third preferences—to be elected. Those are my five brief observations.

The CHAIR: Thank you Professor Smith. We will now go to questions.

The Hon. Dr PETER PHELPS: I have a couple of questions. I will start off with one which we have been asking quite regularly. That relates to the issue of the size of the Legislative Council ballot paper and the potential problems which would be occasioned by an increase in the number of candidates further than what is happening. There have been a number of suggestions, most of which revolve around some sort of legislative requirement to reduce the number by making the burden of nomination more onerous, either through an increase in the nomination fee or through a requirement to have a higher number of people sign nominations. Do you have any views on those matters? You may well reject the initial premise and say, "Let a thousand flowers bloom on the Legislative Council ballot paper."

Professor SMITH: There are physical limitations at play, and also there is the question of whether the flowers bloom. A thousand seedlings may start but very few bloom into flowers. No, it is a serious issue. I would prefer to see it addressed through the route of a more onerous nomination process, given that a more onerous process for payment of a candidate deposit favours wealthier groups and individuals. So, yes, it is a question that ought to be addressed. I do not see a benefit in infinitely expanding the size of the Legislative Council ballot paper—for a range of reasons, including voter confusion and difficulties filling out the ballot and

so on. I think the way to address that would be to require candidates and groups of candidates to prove that they represent serious sections of the community.

The Hon. Dr PETER PHELPS: My second question relates to your paper of March 2013, and a more general issue. There have always been allegations in relation to postal votes of coercion and impersonation. Are the same criticisms valid for internet voting—iVoting? If they are, what do you believe is the extent of any problem in either coercion or impersonation?

Professor SMITH: Coercion and impersonation are two separate issues.

The Hon. Dr PETER PHELPS: Yes, that is why I asked separately.

Professor SMITH: In the context of Australia—and, indeed New South Wales—the issue of coercion is not a serious one. That is the first point I would make. The second point is that it is very difficult to design a system that truly eliminates coercion. Even the practice of voting on polling day at a polling place, as we do it in Australia, depending on how many people you want to coerce—for example, if we are talking about family coercion—it is relatively easy, in my observation, for somebody to observe, a husband, his partner, or for a wife to observe her husband, and how they are filling out the ballot paper. We do not really police that effectively, in my view. A very simple way of coercing somebody is to turn up at the same time as they do at the polling place, occupy the booth next to theirs, and simply observe how they vote.

The Hon. Dr PETER PHELPS: If you like, because there is always going to be a frictional or residual element of coercion which cannot be eliminated, you do not believe that iVoting should be struck out on that ground alone?

Professor SMITH: No. That was sort of a preliminary point because I think sometimes when we think about coercion we are blind to possible coercion that occurs in the form of voting with which we are most familiar. Postal voting, and iVote for that matter, have the same sorts of features.

The Hon. Dr PETER PHELPS: They are almost identical.

Professor SMITH: Except that the iVote allows you to change your vote. That makes it more difficult for somebody to coerce you than is the case with somebody observing you at a polling place.

The Hon. BEN FRANKLIN: Thank you so much for coming today. You mentioned your report to the NSW Electoral Commission in 2014 on voter identification.

Professor SMITH: Yes.

The Hon. BEN FRANKLIN: I wonder whether you could speak to that a little more. We have had some discussion about whether voters should be obliged to provide some identification with the obvious caveats of potentially signing statutory declarations or vouching, or whatever, but raising the onus of identification proof. Can you speak to that and tell the Committee what your views are?

Professor SMITH: I am not sure in the New South Wales context what problem it would solve. That is my first point. In my report, I look at various rationales, particularly multiple voting, voter fraud and so on, for introducing some kind of voter identification. It seems to me that in the Australian context or in the New South Wales context those issues are not serious enough to warrant addressing. Having said that, Australia is very much in the minority when it comes to voter identification. As my report also points out, most countries around the world have some form of voter identification, including most democracies of like nature to Australia's.

The Hon. BEN FRANKLIN: Do you know of any major Western democracies that do not?

Professor SMITH: The United Kingdom, excluding Northern Ireland, does not. That would be the obvious comparator. For example, Canada does. There is a list of them in the appendix to the report. That is the point I would start with. I wonder what problem we are trying to resolve. I think the second difficulty in the Australian or New South Wales context has to do with us not having a general identification card. Many European countries and many other countries in the world, the citizens, from the time they are born, have an identification card, which carries a lot of information. Everyone has one, or almost everyone has one. That makes it easy to implement voter identification schemes.

In societies like that of New South Wales where not everybody has that type of identification, we are caught between perhaps an impulse to want people to identify themselves more effectively at the polls and the fact that we realise that, if we do that, we are likely to disenfranchise people and probably in an uneven way. In the report I go through various groups that might be disenfranchised in that way. It is worth noting in that context the more recent research done on the Queensland experience for the one election in January 2015 when

they did have voter identification. A colleague of mine from the University of Queensland, Graeme Orr, and Tracey Arklay from Griffith University did an analysis which suggested that electorates with higher Indigenous populations were affected by the introduction of that identification requirement.

There is a tension, I think, in the New South Wales context between perhaps a reasonable expectation that people should identify themselves, but at the same time there is the fact that a number of people do not have identification that would meet a reasonable identification test. We often get caught in the middle with a kind of set of pieces of a notification being allowed for voters to prove their identity that set the bar quite low. In the New South Wales context in relation to voter identification, it seems to me there is a range of other issues that it raises in terms of training of electoral staff, as in polling staff, as to which forms to accept and to get that consistent across the State so that we do not have people being turned away at one polling place for having the same identification as people who are being accepted to vote at another polling place for those sorts of reasons.

But the overall reason that there is no evidence of systematic multiple voting—and that was the case in 2015—the rate of multiple voting as I calculated it, just on the raw data, did increase but it increased from 0.1239 per cent of the electorate to 0.1294 per cent of the electorate. That includes the people who are recorded as multiple votes who personally were not multiple votes but are recorded as such by the Electoral Commission. It is not a problem.

The Hon. BEN FRANKLIN: We heard that there is potentially human error—

Professor SMITH: Correct.

The Hon. BEN FRANKLIN: —in that literally the wrong name has been crossed off in a lot of cases.

Professor SMITH: Exactly, yes. The Chatsworth case in Queensland demonstrated that.

The Hon. BEN FRANKLIN: There has also been some discussion in our inquiry about the time frame of when nominations occur and therefore when ballot papers can be printed and sent out, and so on, which is currently just over two weeks before polling day.

Professor SMITH: Yes.

The Hon. BEN FRANKLIN: There is a view that this is not long enough for ballot papers to be printed for political parties, Independents and others to print their how-to-votes and so forth and that poses a range of logistical problems, particularly, for example, for postal voting in regional areas and so on. There is a suggestion that in order to assist with dealing with some of these problems you could either shorten the pre-poll voting period or alternatively issue the writs earlier and therefore potentially do the candidate draw and so forth about three weeks out but still start the pre-poll two weeks earlier. Do you have any views on that issue?

Professor SMITH: I think in terms of the logistics, both for the Electoral Commission and for candidates running a campaign, my preference that I would express would be to extend the length of that period rather than shortening it. I think shortening it inevitably produces difficulties of voters missing out, candidates not being able to campaign properly, Electoral Commission staff not being able to deal with issues that inevitably arise in an election. I favoured lengthening it, rather than—

The Hon. Dr PETER PHELPS: The front-end process.

Professor SMITH: The front end, that is correct.

The Hon. BEN FRANKLIN: And that is something you would support?

Professor SMITH: Yes.

The Hon. BEN FRANKLIN: Are there any general criticisms of the State electoral system or anything you would like to raise that you think we should be investigating or we should look at?

Professor SMITH: As I outlined, probably the issues that I see as significant I raised in my opening comments. It does strike me that the high level of informality—in informal votes—in particular electorates is something that might be addressed because—

The Hon. Dr PETER PHELPS: And your argument is it is statistically correlated with non-English speaking backgrounds [NESB] rather than any other particular factor?

Professor SMITH: That seems to be the strongest correlation, yes.

The Hon. COURTNEY HOUSSOS: I will say that the Hon. Ben Franklin covered several of my questions, so we are on the same wavelength. I refer to your 2014 report about voter ID, because this is something that has been extensively canvassed. One quote I found was that "voter identification measures are

likely to produce more harm than good". You referred to the Queensland example and there are obviously concrete examples for us of Indigenous communities there. There is no doubt that Queensland is not as ethnically diverse as New South Wales, particularly parts of Sydney. Do you have comments on the impact on culturally and linguistically diverse communities [CALD] of having to produce voter ID? How can we address informal voting by CALD communities??

Professor SMITH: On the first issue of voter identification and CALD communities, it is certainly a concern that was raised in the report by representatives of those communities. Getting beyond that was beyond the scope of the report at the time. The research in Queensland I referred to did not address ethnic diversity beyond indigeneity within those electorates. It would be important to do that, so I would be speculating if I went beyond that. Certainly it was a concern raised by the umbrella group for ethnic communities, the old Ethnic Communities Council in New South Wales. The second issue was informality. It is a difficult question, but ultimately it is a question of education in community languages. There are balances between how many resources to put into particular communities. Electoral information is presented in a number of community languages already. I do not have any specific ideas on how to extend that, except to note that it is a persistent problem. We could be having this Committee in 1992 and we would be saying the same thing. Where there are communities that appear to be disenfranchised effectively—they are voting but they are voting informally and I suspect that is not deliberate—that strikes me as a systematic problem that needs to be addressed.

The CHAIR: Can you repeat the figure of multiple voting you quoted before?

Professor SMITH: The raw figure?

The CHAIR: Yes.

Professor SMITH: For 2015 I am not sure I gave you the raw figure, but it was 5,900 recorded multiple mark-offs on the electoral roll.

The CHAIR: What was the percentage?

Professor SMITH: It was 0.1294, but you could round it to 0.13.

The Hon. Dr PETER PHELPS: This Committee likes precision.

Professor SMITH: That is calculated against the Legislative Assembly total vote, which is slightly different from the Legislative Council total vote but it will not affect the result.

The Hon. COURTNEY HOUSSOS: One of the suggestions we heard this morning was having more polling officials and well-publicised polling officials who could speak the particular language of the CALD community. Do you think that that kind of immediate assistance would be one more way that we could try to reduce the informality?

Professor SMITH: I read in the submissions that suggestion. I think yes, where there is a minority community that is large enough for the Electoral Commission to predict that a significant number of voters from that community are going to be at particular polling places, that would make sense. It is not going to address polling places where there are multiple CALD communities, but that is not to dismiss the idea. I am saying that it would have to be a carefully targeted process.

Mr MARK TAYLOR: You refer to Australia being amongst the best electoral administrations in the world. You say that in 2012 Freedom House ranked Australia quite high. Has anything changed or is there another jurisdiction you commonly refer to as having a robust system?

Professor SMITH: The Freedom House score is a much more general score about democratic rights. It also probably focuses on the national level, to be fair. The only other more specific piece of research I could point you to is also at the national level, and that is a project currently being conducted by Professor Pippa Norris called the Electoral Integrity Project, which asks much more fine-grained questions about electoral processes. Australia is included in that, but only at the national level. Australia does reasonably well, the results suggest. It is not in the top tier, if you like, but its elections are generally thought to have quite a degree of integrity. Again, that is at the national level.

The Hon. Dr PETER PHELPS: Generally speaking, are you opposed to or supportive of or neutral on the extension of iVoting to a broader category of electorates?

Professor SMITH: Generally I am supportive, partly because there seems to be a demand for that, and my basic principle would be that as many people as want to vote should be able to vote and they should be able to vote as long as the systems is robust and accurately reflects their vote in the ways that they choose.

The Hon. Dr PETER PHELPS: You say "want to vote". Do you believe that there is an argument to be made for ensuring the iVoting system does not allow you to vote informally?

Professor SMITH: No.

The Hon. Dr PETER PHELPS: But you are compelled by legislation to vote, and the act of voting is the act of casting a formal vote. The de facto idea that you turn up and vote and you have met your requirements does not have any de jure validity, does it? You are compelled, by the law at least, to lodge a formal vote.

Professor SMITH: You are compelled by the law to lodge a formal vote. Of course, some percentage of people do not do that.

The Hon. Dr PETER PHELPS: That is right.

Professor SMITH: I would be loath to see one form of voting which required a formal vote while we continue with others which allowed an informal vote.

The Hon. Dr PETER PHELPS: If you could institute a system which would compel a formal vote, why should the compulsion for the adherence to the law not be inscribed in that system?

Professor SMITH: If it is asymmetrical then I would see that being objectionable. I would rather see removing the element of the law that says you must cast a formal vote, because it seems to me that that is de facto what happens. We cannot enforce, and I do not think anyone in this room would believe we can enforce, the law. In that sense the law does not reflect reality. Where I would see the iVoters having an advantage over paper-based voting is that it could be constructed to inform a voter that their vote was informal. They may go ahead and cast an informal vote, but it seems to me it is an advantage, particularly for people who accidentally vote informally, to be told that if you proceed with this vote it will be an informal vote. They may well proceed.

The Hon. Dr PETER PHELPS: But as a corollary of that, if you accept the notion of legitimising informality, is that not just a slippery slope to saying we should have non-compulsory voting?

Professor SMITH: No, because I think there are other reasons for compulsion.

The Hon. Dr PETER PHELPS: Other than getting a sausage sizzle afterwards.

Professor SMITH: Well, you do not get that if you iVote—unless you cook it yourself maybe.

The Hon. Dr PETER PHELPS: I mean I could understand someone who would say, "I believe in compulsory voting and therefore the compulsory casting of a valid vote" or someone who says, "You should have the ability not to cast a formal vote", but also, extending from that, "You don't have to vote in the first place", but I am not sure where the logical continuum is which says you can cast an informal ballot, effectively not voting, and say, "I don't agree with not voting in the first place".

Professor SMITH: If I have understood you, I think the argument from my position would be that compulsory voting produces the greatest amount of information for legislators.

The Hon. Dr PETER PHELPS: I agree.

Professor SMITH: So compulsory voting tells us what the community thinks of the choices on offer. So that is a reason for compulsion.

The Hon. Dr PETER PHELPS: Why can you not then compel people to do what they are required to do?

Professor SMITH: Because the requirement may not follow logically from what I am saying. We want to know the broad range of community opinion. The problem with voluntary voting is that—

The Hon. Dr PETER PHELPS: I am not disagreeing with you there. I am saying why do we not construct a system which compels the compulsory element of compulsory voting?

Professor SMITH: Because informal voting is a signal to legislators and to candidates; it is saying—

The Hon. Dr PETER PHELPS: None of the above.

Professor SMITH: Exactly.

The Hon. BEN FRANKLIN: And you would argue a significant rise in informal voting is worthy of analysis and sends a message in itself, for example.

Professor SMITH: Definitely.

The Hon. Dr PETER PHELPS: The only reason we have heard for the correlation in informal voting is an educative one and that is in relation to non-English speaking communities.

Professor SMITH: Because that is something, it seems to me, which is a systematic problem that lies beyond the range of candidates and political positions being put at the election. So my interpretation of that problem is that these are people who in most cases want to vote, want to indicate their opinion about the range of candidates on offer, but are not able to because they misunderstand the instructions.

The Hon. Dr PETER PHELPS: I do not disagree, but this aggregation of "I don't know how to vote" and the drawing of a penis on a ballot paper are two different things.

Professor SMITH: Precisely, yes.

The Hon. Dr PETER PHELPS: The second thing I wanted to raise was something I have raised earlier. The electorate of Barwon is currently over 350,000 square kilometres. There are two other States in Australia—Queensland and Western Australia—which have for their particularly large electorates a statutory malapportionment factored into the drawing of the boundaries. Would you be supportive of a statutory malapportionment for the extremely large electorates in New South Wales?

Professor SMITH: It is not something I have thought about recently, so I would not like to give you an off-the-cuff answer.

The Hon. Dr PETER PHELPS: Would you be able to take it on notice?

Professor SMITH: Sure.

The Hon. Dr PETER PHELPS: You might say "I have no opinion", but it is something which has been exercising my mind, and certainly the minds of other people, given that there is—as I am sure you will understand—a long-term demographic trend that will only increase the geographic size of electorates west of the sandstone curtain. Would you agree with that?

Professor SMITH: The demographic trend, yes, that is correct.

Mr ADAM CROUCH: Obviously with the experience we have seen with iVote in 2015, do you think that there are greater risks associated with a system such as iVote versus the traditional pencil on paper that is currently done in New South Wales?

Professor SMITH: When you say "risks" what sort of risks are you referring to?

Mr ADAM CROUCH: I suppose the risk of the coercion thing we discussed earlier. From my understanding of what you said, you believe the factor of coercion is pretty similar, whether it be a digital vote or whether it be a paper ballot. Would that be right?

Professor SMITH: Yes, and particularly a postal vote. If you think there are problems with the iVote and coercion, you have got to extend that to a postal vote because both of them are forms of remote voting: one is simply paper and the other is electronic.

Mr ADAM CROUCH: With regard to internet voting and obviously what was done in 2015, are there any jurisdictions you are aware of, outside Australia necessarily, that have done an internet or digital voting system better than ours that the Electoral Commission could look at as a yardstick? Obviously there is a public expectation of digital voting—it is now out there—so are there people in jurisdictions from whom we could take lessons, effectively on doing it better?

Professor SMITH: If you are talking about the technical aspects of the system, that is not my area of expertise. I am a political scientist but "scientist" is used very much in inverted commas there; I am not a computer scientist or security expert. The sorts of examples you could look at are reasonably well canvassed. Whether they do elections better than we do them in New South Wales would be a matter for judgement. But you could look at Switzerland, you could look at Estonia, you could look at some of the large Canadian municipal examples, elections which are conducted either entirely or largely by remote electronic voting.

The CHAIR: I have a couple of questions. We have spoken about photo ID but what about having an electronic roll—on election day I am talking about—where you link up the roll and—

Professor SMITH: An electronic mark-off?

The CHAIR: Yes, and mark off. What are your views about that?

Professor SMITH: Again, assuming the technical capacity is there, I think that would reduce the amount of accidental multiple voting—people who postal vote and then turn up. At the moment that is not

necessarily being captured. Presumably, reconciling the rolls more quickly would allow quicker follow-up for people who have not voted. I think if it can be done reasonably effectively and cheaply. I mean there is an issue with how do you do it and who provides the infrastructure? Whenever you are thinking about electrical infrastructure you are thinking about something that is only used once every four years. To get an electronic mark-off system you need some electronic infrastructure that is not going to be used that often. So that is an issue that has to be, I think, thought about from an administrative point of view. But I think the advantages in terms of perhaps greater confidence and prevention of the small amount of multiple voting that occurs now would be advantageous.

The CHAIR: The other issue is that currently in Australia we have multiple rolls, one at a Federal level, one at a State level, and unfortunately they are very different. Obviously in New South Wales we have automatic enrolment. What would be your view to have one roll—that is, the Commonwealth roll—and, therefore, not have the need for automatic enrolment through various agencies? Let us face it, there are a lot of data entry errors and all sorts of things that happen which we witness at every election; for example, someone says, "No, I have lived here for the past five years"? Do you think having just the one roll would fix up those issues?

Mr SMITH: No, it would not. The advantages of the automated roll are that they reduce the issues you are talking about. Those issues are still there—some people who should be enrolled but are not. My reading of the data suggests that more people have been captured since the introduction of the SmartRoll than would have been captured had we stayed with the joint roll with the Commonwealth. It was recognised at the time in the parliamentary debates that breaking the nexus would mean there would be two different rolls and it would cause some problems. The expectation was that the New South Wales roll would be more accurate than the Commonwealth roll.

The Commonwealth has shifted in the direction of automatic enrolment itself so there may be a point in the future where the two rolls become reconciled. There are clear advantages in that. There is confusion now among some people who are automatically enrolled in New South Wales but do not realise, particularly young people, that it is still an obligation for them in many cases to enrol at the Commonwealth level. Reconciling the two rolls is a good idea but I do not think it should be done by reducing the automation.

The CHAIR: What about your views of electronic voting on Election Day, subject to security checks? Having some form of verification, such as you vote electronically but there is a printout that you put in a ballot box, or at least trial a system like that over the next cycle?

Mr SMITH: This is electronic voting at booths like the Australian Capital Territory? The technical side of that, there is a of material in that and I am not an expert.

The CHAIR: Everything is qualified by that.

Mr SMITH: I think there would be some advantages to that. One of them would be that you could indicate to people whether or not you want to do this, that they are casting an informal vote and do they want to continue with that. It seems to me that would be an advantage. Presumably the count would be subject to fewer issues than a paper ballot. The question I would see is an administrative one, you have to have good infrastructure, it is only going to be used every four years and you want to roll it out across all of the electorates—maybe pilot it in some electorates. There is a lot of potential for infrastructure cost. You would have to weigh up the advantages of that against those costs.

The Hon. Dr PETER PHELPS: Just on that point, what is the cost benefit analysis? If the only benefit is the speed of the declaration of the result that is a lot of money to be spending on what is essentially the distinction between a result at 6.30 at night and 9.30 at night.

Mr SMITH: You would have to do the analysis for New South Wales to see what the likely costs and benefits would be. Other countries have done this and decided that the benefits outweigh the costs. Some big electoral systems such as Brazil and India have full electronic voting of the type we are talking about and part of the reason was the cost. Paper is not costless, counting is not costless, paying the electoral staff and so on. That analysis would need to be done for the specific case of New South Wales.

The Hon. Dr PETER PHELPS: Could you send something to the Committee in relation to what you see as the correlatory statistics between informality and non-English speaking background?

Mr SMITH: I can do that.

The CHAIR: Thank you for presenting before us today. If we have any further questions do you have any objection if we send them in writing with the answers to be delivered in the next couple of weeks?

Mr SMITH: That is fine.

(The witness withdrew)

JOHN SCHMIDT, Commissioner, NSW Electoral Commission,

LINDA FRANKLIN, Director Elections, NSW Electoral Commission,

SIMON KWOK, NSW Electoral Commission,

PAUL BEEREN, NSW Electoral Commission,

MARK RADCLIFFE, NSW Electoral Commission, all affirmed and examined:

The CHAIR: Thank you for coming in today. Congratulations on your appointment. You are only two weeks in the job?

Mr SCHMIDT: This is the fifth day. I am relying on my colleagues to a great extent.

The CHAIR: To Ms Franklin, thank you for your assistance to the Chair and the Committee during the interim arrangements. Does anyone have any questions as to the procedures of the Committee? I do not expect any as all of you have been here before, one way or the other, over many years. Before we commence with questions does anyone wish to give an opening statement? I will open up the opportunity to all five witnesses in any order you wish.

Mr SCHMIDT: A considerable period of time has passed since the Electoral Commission conducted the March 2015 general election. I appreciate that this inquiry has been put on hold while Committee members were engaged with the referred inquiry into the final report of the expert panel into political donations and the Government's response. I am pleased to note that the Committee has recently tabled its report on that inquiry and I can assure you that the Electoral Commission looks forward to working with the Government to implement these reforms, the key one being a thorough review of the Election Funding, Expenditure and Disclosures Act 1981 and the Parliamentary Electorates and Elections Act 1912.

During this period the Electoral Commission itself has undergone some major changes, not the least of which was the retirement of my predecessor as Electoral Commissioner, Mr Colin Barry. Colin played a fundamental role in the evolution of electoral processes, both in New South Wales from 2004-2015 and previously as the Electoral Commissioner of Victoria. His contribution to the professionalisation of election management cannot be understated. Since his retirement, the Director Elections, Ms Linda Franklin, stepped into the role of Acting Electoral Commissioner. Linda has effectively and efficiently guided the agency through a comprehensive restructure and has the Electoral Commission well-primed to conduct next month's local government elections. I would like to record my personal thanks to Linda for her assistance to me in taking up this role.

I would like to address some specifics of the conduct of 2015 general election. I will present some figures to demonstrate the scale of this electoral event: 2,806 polling places established; 22,270 staff members employed; 4,561,234 total voters; 283,699 users of iVote; 394 candidates nominated for the Legislative Council; and 540 candidates nominated for the 93 Legislative Assembly districts, up from 498 candidates in 2011, but down from 661 candidates in 2003 and the record 732 candidates in 1999. The most significant change in nominations at the 2015 election was the 93 candidates nominated for the new No Land Tax campaign, while the number of nominations from Independents declined from 91 to 46. There were 19 political parties registered for the general election, up from 17 parties in 2011.

While there was a slight fall in the electoral participation rate from 92.6 per cent at the 2011 election to 90.5 per cent in 2015, this is in keeping with other Australian jurisdictions. This turn-out rate is closely mirrored by voters' satisfaction with the process. The Electoral Commission commissioned the Ipsos Social Research Institute to provide a reliable and representative picture of electors' perceptions of, and satisfaction with, the services offered at the election. Among the key findings of this independent research were that: 88 per cent were satisfied with their overall voting experience; 92 per cent were satisfied with the time it took to vote; 96 per cent were satisfied with the polling places, and 95 per cent of those electors with a disability were satisfied with the polling places; 96 per cent were satisfied with the iVote system; 95 per cent were satisfied with postal voting; 91 per cent were confident that the election results were accurate; and 96 per cent were satisfied with the speed at which election results were available on election night.

The CHAIR: And 100 per cent of the people who were elected were happy.

Mr SCHMIDT: Despite these high levels of satisfaction, no event on the scale of the election would be without some issues. The Electoral Commission is strongly committed to service improvement, and I am pleased to be able to advise committee members that over a quarter of electoral districts reported no complaints. Of the complaints which were received, the largest proportion by far related to closure of polling places used

previously. This was followed by accessibility issues for disabled or elderly voters; wait time or queues; adequacy, size, location of polling places, or voters being unable to locate a polling place.

These issues have influenced the crafting of the new Complaints Handling Policy based on the Ombudsman's model, which has recently been introduced in time for the local government elections. As the most frequent complaint was access to polling places, the Commission will increase its efforts to communicate to voters when a polling place is to be abolished and the locations of the nearest alternative venues. Turning to iVote. A significant development in New South Wales is undoubtedly the growth in the use of iVote—a 505 per cent increase since its introduction in 2010. Electors who registered for iVote were more likely to have voted than those who registered for a postal vote, and 10 per cent of those surveyed by Ipsos said they would not have voted at all if iVote had not been available. In a world where people seek greater flexibility and the convenience of online operations, iVote contributes to increasing or at least maintaining voting participation.

The Commission is acutely aware of the security concerns surrounding the use of electronic voting both locally and global. These concerns have been addressed through the core design considerations, security principles, implementation and evaluation as part of the overall voting system. Security design for the iVote system has benefited from local and global experience, in part provided by specialist third parties for specific expertise. To ensure that the technology and processes behind iVote are continually improved as the field of electronic voting evolves, the Commission is strongly engaged with academia around iVote and is working with computer scientists at the University of New South Wales and Macquarie University, as well as political scientists at the University of Sydney. I note with interest the comments regarding electronic voting made by the Prime Minister and Leader of the Opposition, following the recent Federal Election. The NSW Electoral Commission would be fully supportive of working with the Australian Electoral Commission to assist with the implementation of a national iVote system. Sharing the iVote technology with other Australian jurisdictions provides the opportunity to reduce the ongoing cost of iVote delivery and maintaining its security.

I now turn to other developments arising in the context of the last election. As Committee members are aware, any electoral material that is to be distributed by registered political parties, candidates, groups and other organisations or community groups on Election Day must be registered in advance with the commission. A technological innovation for 2015 was the introduction of online registration of how-to-vote materials from candidates and parties. The great majority of parties, groups and candidates used this online service to submit their applications and materials. For those who were unable to use the service who or encountered difficulties, the commission provided a full-time support person during the registration period. This automated system and process were very efficient and enabled submissions to be submitted, reviewed and determined within 24 hours. In most cases this was between one to two hours for the complete process. Similar efficiencies and convenience for candidates and parties could be gained by legislative change to enable online nominations and payment of nomination deposits.

Accessibility is of course very important when it comes to people exercising their democratic rights. As a key component of increasing turnout at the 2015 election, the commission worked with three of its reference groups to help with community engagement and to identify barriers to electoral participation. The groups are: the Equal Access to Democracy Disability Reference Group; the Aboriginal and Torres Strait Islander Reference Group; and the Culturally and Linguistically Diverse Reference Group. These groups consist of representatives from peak bodies, nongovernment organisations, and government organisations that provide services and advocacy. Reference group members also distributed information through their own networks and community groups, creating interest and raising awareness about the election.

The commission found that the reference groups added great value to its work by providing important and positive feedback on draft materials and concepts proposed by stakeholders. Working with the reference groups provided access to wider networks and distribution channels than might otherwise have been possible, as well as helping the commission to engage with communities in two-way communication. A 2011 committee recommendation was that the commission to facilitate a dialogue between equal access to democracy groups and candidates and parties and to facilitate increasing accessibility of how-to-vote cards to these special interest groups. The commission held a forum prior to the 2015 election inviting all party representatives and special interest reference group members to attend. In addition to this, the commission produced a guide for parties and candidates on how to produce how-to-vote cards in accessible format. This was available as a download from the commission website and was given as a handout at candidate and party information seminars. I am not sure whether that recommendation was made post the 2011 election.

I take this opportunity to briefly address some concerns raised in other submissions to the Committee's inquiry. It was recommended that there be a rotation of names on ballot paper to reduce donkey-voting. Regarding the proposition that rotating candidates to share the top position would reduce donkey-voting, it is important to balance this suggestion with the logistics of producing how-to-vote cards, and the difficulties that

might arise from distributing varying ballot papers. Mention has also been made of the creation of electronic how-to-vote cards for iVote purposes. With the growth in electronic voting, a number of submissions advocated for the provision of a link to an electronic how-to-vote card from the iVote page. The commission has examined that idea. However, members would appreciate that parties often submit a range of how-to-vote options to the commission in the course of an election campaign before deciding on the one to be made available on Election Day. Given that the majority of people voting by iVote do so prior to Election Day, there is the potential for confusion because voters may be directed to different versions depending on when they vote. The only practical way to overcome this would be to limit parties to providing only one how-to-vote card, which I would suggest may not be feasible.

I refer now to misleading electoral material and how-to-vote information. The dissemination of allegedly misleading material is a recurring issue for the commission. The Parliamentary Elections and Electorates Act provisions regulating electoral material are intended to reserve to the electorate the responsibility for assessing the veracity of political messages, and for registering that assessment in the act of voting. They are not intended to regulate the content of political messages directed at influencing the choice of preferred candidates or political parties by voters but, rather, narrowly to regulate electoral material that is directed at influencing the way in which the ballot paper is actually marked. This distinction has been consistently upheld by the courts. South Australia is the only Australian jurisdiction that is required to regulate "truth in political advertising". I understand that this has been problematic for the South Australian Electoral Commission, which has called for the repeal of the relevant provisions.

Another recurring issue is that of provision of proof of identity when voting. The Electoral Commission has consistently opposed this proposal. Academic research and practical experience indicate caution is required to avoid unintended consequences through introduction of mandatory production of proof of identity prior to voting. The issue has been raised specifically in relation to pre-poll and iVote, both of which are based on self-affirmed eligibility, as is postal voting. I refer Committee members to the 2014 report of the University of Sydney's Professor Rodney Smith, entitled "Multiple Voting and Voter Identification", commissioned by the New South Wales Electoral Commission in 2014. With regard to multiple voting, Professor Smith found that the best evidence suggests that in New South Wales:

13. a large number of apparent but false multiple votes are generated by raw electoral commission mark-off data. i.e., human error;
14. once the false multiple votes are removed, the evidence is that multiple votes form a very small proportion (0.08%) of overall votes;
15. the number of multiple votes is too small to determine the winner in any seat;
16. multiple voting is not strategic: it is not directed at marginal seats; and
17. multiple voting is strongly related to demographic factors such as fluency in English.

Moreover, Professor Smith concluded these findings are consistent with those for other electoral systems. I noted earlier that confidence in the electoral process is vitally important both to the Electoral Commission as an election management body, and to the results of the election. Accordingly, I will briefly address the Court of Disputed Returns matter that followed 2015 election. On 29 May 2015, the leader of the No Land Tax Party campaign, Mr Peter Jones, lodged a petition in the Court of Disputed Returns based on claims that there had been interference with No Land Tax Party campaign employees by the Liberal Party, Macquarie Radio Network and the Australian Labor Party; and a defamatory smear campaign by Macquarie Radio Network. Mr Jones petitioned the court to make orders which included that the Legislative Council result be declared void.

Ultimately, Mr Jones was granted leave to discontinue. The court held that none of the matters alleged by him could, if proven, have constituted "illegal practice" within the meaning of section 164 of the Parliamentary Election and Electorates Act. Mr Jones was ordered to pay the costs of all of the parties. As the petition did not make any claims of misconduct on the part of the Electoral Commission, nor allege any breaches of the Act, it would not seem to be an effective use of the commission's resources to put in time and effort of addressing petitions of this nature. To avoid a repeat of this, I propose that "illegal practices"—the term used in section 225 (3) of the Act—be specifically defined to be limited to breaches of the Act only. This would bring NSW into line with Commonwealth electoral practice.

Now that the Committee has completed its Inquiry into the Expert Panel Report, I urge that the recommended root-and-branch reform of the Election Funding, Expenditure and Disclosures Act 1981 be undertaken as a high priority. Further, consideration should be given to incorporating these reforms into the proposed new Electoral Act, together with the electoral provisions of the Local Government Act 1993, Local Government (General) Regulation 2009, and the City of Sydney Act 1988 to create a single electoral code for New South Wales.

The CHAIR: My first question relates to having an electronic roll for Election Day involving voters going to a booth and getting their name ticked off. I assume that if that were to happen the commission would need additional resources. What are your views about having that type of system?

Mr KWOK: We are working on electronic mark-off. We already electronically mark off electors during early voting. The last frontier is having it at all 2,800-odd voting places. That is about network connectivity.

In 2015, we introduced electronic elector look-up, which allows us, through tablet technologies, to look up the enrolment details of an elector. That helps us to facilitate the issuing of absentee votes—determining whether an absentee ballot paper should be issued. We are now working towards elector mark-off using similar tablet technologies. Come the day when there is more pervasive network connectivity, that will allow us to have real-time elector mark-off information. But obviously that is pending the reach of the network to all the polling places statewide.

Mr ADAM CROUCH: With that electoral roll you are currently using electronically, if someone goes and does a prepoll vote and gets their name marked off, does that effectively prevent them from voting somewhere else? Are they struck off at the time?

Mr KWOK: Access to the electronic information requires, obviously, access to the mark-off database, if you like. On Election Day, 2,800 polling places do not have access to the technology. If an elector tried to vote before the Election Day, they would not be allowed to vote—because the system would detect that they had already voted.

The Hon. COURTNEY HOUSSOS: What provision is there for human error within that system?

Mr KWOK: What provisions are there?

The Hon. Dr PETER PHELPS: I will give you an example. Let us say I go and prepoll, and then I turn up on polling day and say, "I would like to vote"—and they say, "No, you prepolled." If I then say, "No, I didn't", do I get a declaration vote at that point?

Mr KWOK: Yes, you may. Where there was a mark-off in error, the current provisions allow a claim and a declaration vote can be made.

The Hon. Dr PETER PHELPS: Because they are both declaration votes, the internal auditing—when you receive two envelopes ostensibly from the same voter—would be about working out which is the valid one.

Mr KWOK: That is exactly right.

The CHAIR: Would you support a trial, over a period of election cycles, of electronic voting—still on the booths—on Election Day?

Mr Schmidt: Do you mean elector mark-off from the roll?

The CHAIR: No, I am moving on now. I am asking about actual electronic voting now. You might vote on a tablet, for example.

Mr KWOK: Do you mean attendance voting using electronic—

The CHAIR: Yes, attendance voting. You would still have to turn up at a booth and, potentially, a bit of paper gets printed out and you—

Mr KWOK: I would say we support that.

The Hon. ROBERT BORSAK: I will not start with iVote; I am sure we will get a lot more of that. Just dealing with the Legislative Council ballot paper: some submissions have suggested that there are too many candidates and that it is starting to get too large again, especially at the last election, where it was starting to build again—you only have to look at the table that Antony Green produced. What changes, if any, would you recommend to ensure that not so many candidates appeared on the Legislative Council paper that an election becomes too complicated—balancing that against the right of individuals and groups to run for parliament?

Mr Schmidt: My understanding is that ultimately those are matters for the government and the parliament as to who can nominate and the number of seats available.

The Hon. ROBERT BORSAK: You do not have a position on it?

Mr Schmidt: No.

The Hon. ROBERT BORSAK: That is fair enough.

Ms FRANKLIN: The only other thing I would like to add there is to limit the number of candidates per group to 21.

Mr KWOK: I will take up that point. Currently there are no provisions limiting—within a group contesting a Legislative Council election—the number of candidates in that group. As you know, the LC elections have 21 positions being contested. It is impossible for the 22nd candidate in a group to have any chance of being elected. So it would make sense just for logistical reasons—what is involved in producing very large papers. It is quite a large ballot paper already. In terms of size, it is actually bigger than the federal Commonwealth Senate ballot paper. So there is a preference, for those reasons—subject obviously to government policies—for a group that contests an LC election to be limited to 21 candidates. That would certainly assist with our logistical preparation.

The CHAIR: That would be your view for local government as well—say, for example, in a ward, where there are only three candidates to be elected. I know at least one council area where there are five or six candidates contesting within one group.

Mr KWOK: That is correct.

The Hon. ROBERT BORSAK: For our submission—the Shooters, Fishers and Farmers Party submission—to this committee, we were looking at making suggestions about the use of social media. I think what happened in the campaign was that, when we were putting sponsored posts up, we had to submit those social media posts for prior approval. Do you have a view on that?

Ms FRANKLIN: We do not have any regulatory power at the moment, as I understand it, over social media—and it is extremely challenging to regulate social media, I would suggest.

The Hon. ROBERT BORSAK: That was not our experience. We were told that sponsored posts were effectively advertising and we had to have them pre-vetted—and that is what our people did.

Ms FRANKLIN: Perhaps we can take that question on notice and get back to you.

The Hon. Dr PETER PHELPS: Rather than put you in the invidious position of asking you for a policy assessment—would you have the capacity, if the legislation were amended, to increase the number of people required to nominate a person for election on a Legislative Council ballot paper to a substantially larger number than what is required at the moment? Would the Electoral Commission have the capacity to vet those nominatory signatures?

Mr KWOK: It is very challenging under the current process where, as you know, the closing date for nominations for the LC elections occurs on the Thursday after the opening of nominations. It was certainly our experience in 2015 that there were a large number of very late submissions. We even had some groups who turned up after 11 o'clock on that day. It is quite challenging to process those nominations and have them ready for a draw in the afternoon. We have also made submissions in the past, as Mr Schmidt pointed out in his opening address, for an online nomination system to allow self-service for potential candidates—to verify all the details so that the submission of their nominations can be 'pre-vetted', if you like. That would certainly improve efficiency and facilitate the participation of potential candidates. If there were an online system, certainly there would be a better opportunity to support an increase in the number of nominators.

The Hon. Dr PETER PHELPS: What about a situation where writs were written earlier—essentially front-loading the campaign by an additional three days?

Mr KWOK: We would support that suggestion.

The Hon. COURTNEY HOUSSOS: On the issue of limiting candidates to 21 per group, how often has a group nominated more than 21 in the past? You can take that on notice if you like. Is it commonplace or is it something that is an aberration?

Mr KWOK: It is not common, but certainly there was one instance in the 2015 election—one group that indicated that they intended to nominate more than 21 candidates. Eventually they did not, but they certainly gave an indication to us that they would. Can I just point out also that, upon getting that news, we actually had to make some contingencies. As you can appreciate, the printing of the ballot paper is a large-scale logistical exercise. It requires paper to be procured. The size of the papers is constrained by our suppliers' printing presses, if you like. We had to make some contingency in procuring different sized ballot paper on the chance that we have to cater for a larger group beyond 21.

The Hon. COURTNEY HOUSSOS: We received testimony this morning about the culturally and linguistically diverse [CALD] communities particularly in parts of Sydney and the need to be able to communicate where possible in the primary language of those areas. One of the suggestions, as a list of prepoll

and polling places is provided to the registered political parties and candidates to provide feedback, was that you could add on to that where you were planning on having staff who spoke that additional language. Would you be supportive of that?

Ms FRANKLIN: Yes, we would be supportive of that because we do give priority of employment in 15 districts to those districts that have a high population of people from that background so we would be very happy to share that information.

The Hon. COURTNEY HOUSSOS: Fantastic. And in terms of on the day inside the polling booth, because scrutineers are allowed inside the polling place on polling day, what measures are in place to ensure scrutineers do not intimidate voters?

Ms FRANKLIN: We obviously have staff and a polling place manager there and in larger places a deputy polling place manager. It is their role to ensure that that does not occur. Those people generally are able to walk around the place to observe through the course of their job. We obviously give them training as well in that vein. Those are the measures we take.

The Hon. Dr PETER PHELPS: But there is a fine line between assistance and advocacy and coercion, which in the absence of polling booth officials who speak the core languages of that community is hard to assess.

Ms FRANKLIN: I agree with you. It is hard to assess. That is why it is really important to have as many officials as we can who actually speak the core languages of that particular electorate and community in the polling place.

The Hon. COURTNEY HOUSSOS: You said you prioritise the recruitment. Could you explain briefly how you do that?

Ms FRANKLIN: We have an online staffing system. When people go online to apply for a position we ask them which languages they speak and then we can sort that grouping on the system. We give those names to the returning officers who are recruiting for staff in those areas. We can put out additional advertisements et cetera to call for more people if we do not have enough.

The Hon. COURTNEY HOUSSOS: Do you try to match people to areas that they come from?

Ms FRANKLIN: If we can, yes, definitely. That is preferable so people do not have to travel too far to the polling place.

The Hon. COURTNEY HOUSSOS: I have a final question on third party campaigners. The requirements on third party campaigners are very onerous under the legislation, the same as for registered political parties. We have heard that third party campaigners found it difficult to get advice from the Electoral Commission as to what is appropriate and what is not. This is something that registered political parties work out over elections. We heard that the Electoral Commission specifically does not provide advice on what is appropriate and what is not. Is that a legislative problem or is that a policy decision from the Electoral Commission?

Ms FRANKLIN: I will have to take that question on notice so we can check that out. I will have to go back to our funding and disclosure unit to check out the position on that.

The Hon. COURTNEY HOUSSOS: Thanks very much.

The Hon. BEN FRANKLIN: First things first: Welcome, Mr Schmidt, in your first week. It is great to have you here. We appreciate you taking the role. I will be talking about a range of different issues in two or three different chunks, most of which are critical of the Electoral Commission and seek to look at what the specific issues were in this particular case and also policies and protocols to deal with them more broadly in the future. I was a former party State director, Mr Schmidt, so I have had significant experience in what I have seen in this place as well as at an organisational level. I want to make it very clear that the Electoral Commission on the whole does an exceptional job. I and this whole Parliament are strongly supportive of the work you do and 99 per cent of what you do is absolutely professional, beyond reproach and so on. All I am trying to do in my questions and assessments is to get that final one per cent.

Mr SCHMIDT: Thank you.

The Hon. BEN FRANKLIN: I want to make a comment on your initial opening statement before I move to my concern which is relatively minor, but I just want to mention it. You talked about the potential registration of how to votes for the iVote system, noting that parties put in multiple how to votes and therefore that may require the instruction of limiting the how to votes to one from individual parties. I respectfully suggest

that that is not the case. Currently with declared institutions parties are only allowed to have one how to vote in the folder that is being shown to residents at declared institutions. What parties do is select whichever how to vote they would like. I would suggest you could do the same thing for the iVote system as well if you proceed down that line.

Mr SCHMIDT: Thank you for that observation.

The Hon. BEN FRANKLIN: The NSW National Party outlined to this Committee and in its submission which I presume you have read some serious failings by the commission on Election Day relating to the enforcement of polling day signage restrictions found in section 151B of the Parliamentary Electorates and Elections Act [PEEA]. Could one of you please talk to why the commission took the approach on the day that it did?

Ms FRANKLIN: I am happy to talk to that. In short it is our best regulatory practice across all electoral jurisdictions in cases of minor breaches of the electoral legislation, if those alleged breaches occur in the polling place environment, we give an opportunity for it to be addressed by the alleged offenders before enforcement action is taken. This enforcement policy is applied consistently and fairly by the commission across the parties, candidates and other participants in the campaign process. We have to take into consideration reasonable and responsible exercise of enforcement powers, the public interest and the safety of our election officials. Sometimes these events can become quite heated. We have had previous instances of concern for safety of our election officials in these matters.

It is also important to note that unlike section 111 of the Election Funding, Expenditure and Disclosures Act [EFEDA] there is no equivalent penalty notice regime in the existing PEEA. We think this would be a powerful deterrent if it is actually introduced. Our election officials' primary responsibility is to facilitate the voting process of electors and to achieve maximum participation in the democratic process. Ultimately we believe it is the responsibility of the parties and the candidates to uphold the legislation and abide by the law. The parties and their candidates—

The Hon. BEN FRANKLIN: Are you seriously suggesting that it is not the responsibility of the Electoral Commission to ensure that the law is upheld?

Ms FRANKLIN: We do have that responsibility but ultimately the parties and the candidates also know the legislation and they have an obligation to abide by the law themselves in terms of their electoral material on Election Day.

The Hon. Dr PETER PHELPS: I know I cannot do more than 110 kilometres an hour down the Hume Highway. Should I police myself?

Ms FRANKLIN: I would suggest that ultimately it is the responsibility of the individual to stick to the speed limit.

The Hon. BEN FRANKLIN: With the greatest amount of respect, this is an absurd contention. And I do not agree with your contention that it was a minor offence when you are talking about signage that is two, three or four times the size of the legally allowed signage which has a massive and significant impact in a marginal seat in terms of the image that people are seeing. Firstly, for the Electoral Commission to take hours to even respond to those complaints before actually talking to the parties concerned; secondly, then not checking if the party actually complied with your direction; and, thirdly, to take until one o'clock before advising your staff, which you did, to ensure that those things were cut down is a massive abrogation of your responsibility.

I respectfully suggest that on polling day the responsibility for enforcing the Act falls to the Electoral Commission, which is deemed to be the arbiter. If your contention is that it is not the Electoral Commission's fault, it is up to individual candidates and parties to regulate themselves, that will ensure a free-for-all. That will ensure that people ignore registered how-to-vote material. They will hand out whatever they like. They will ignore all rules. They will ignore the six-metre rule. They will potentially follow people into polling booths. Are you suggesting that polling booth workers should not stop any sort of intimidation and coercion within the polling booths?

Ms FRANKLIN: It is the responsibility of polling booth officials.

The Hon. BEN FRANKLIN: It is?

Ms FRANKLIN: It definitely is.

The Hon. BEN FRANKLIN: Therefore, why is it not the responsibility of polling booth officials to maintain the rules and the law in all of the environs of the polling booth?

Mr SCHMIDT: I will interrupt here. If I get the answer completely wrong through my ignorance then I am sure I will be stopped immediately by my colleagues. How do we solve issues like this? The instance that occurred has been explained to me. As Ms Franklin has pointed out, at the moment the legislative powers that are given to the commission to respond when those circumstances arise are limited. If it is a breach of the legislation then we can institute prosecution. Officials can say, "We are going to prosecute you for doing that." I do not want polling officials to manhandle people or to become involved in altercations. Various issues can arise from that. Looking to the future, penalty notices would be an obvious extra regulatory tool. In devising the penalty notice provisions, consideration could be given to the frequency with which they can be issued.

The Hon. BEN FRANKLIN: And their timeliness as well.

Mr SCHMIDT: Exactly. Then there is the capacity to reinforce the requirement for those people to do the right thing.

The Hon. BEN FRANKLIN: That is an excellent answer. Thank you. Would you also consider it appropriate for the Government to provide the agents and officials of the Electoral Commission with the power to enforce that by cutting down those signs? I understand your point. It is well made. If there were a big, burly union thug standing there of course you would not do anything to put your people in danger. I understand that. In 99 per cent of polling booths, every polling day morning, there is a sign up near the entrance and the polling booth official comes out and says, "We need to take that down so that we can put our official polling place sign up" and it is immediately complied with. I contend that the same thing would happen if you asked people to pull down a sign that was illegal under the Act.

Mr SCHMIDT: My initial response is one of reservation, for the reason I outlined before. I would certainly be happy to consider the proposal further. If it becomes a matter of physical intervention then the question is whether the police have a role to play. They are more properly equipped to carry out that function.

The CHAIR: That is if somebody said no to taking a sign down.

Mr SCHMIDT: Yes.

The Hon. BEN FRANKLIN: As I said, in 99 per cent of cases I think they would say yes.

The Hon. Dr PETER PHELPS: No-one is being asked; that is the problem, Mr Schmidt. No-one is being asked to remove illegal material. The point Mr Franklin is making is that it would be good if the senior electoral official did a survey of the area around the polling location and indicated to the booth captain that their material was outside the law and should be removed or they would face prosecutorial action.

The Hon. BEN FRANKLIN: And timely penalty notices will be issued.

Mr SCHMIDT: A penalty notice would add an extra impetus for action in the circumstances.

The Hon. BEN FRANKLIN: I agree, but Dr Phelps's point about what should happen before that is valid. Thank you. That is extremely helpful. What specific action has been taken against those who committed the deliberate breaches of the Act?

Ms FRANKLIN: I do not believe any action has been taken. My understanding is that those posters came down during the day.

The Hon. BEN FRANKLIN: They came down by the end of the day. As you know, because I communicated with you directly on this matter, there were still illegal posters up at 1 o'clock in the afternoon. There is photographic evidence of that. They were on display for more than half of the polling day. Did the commission take any action to prosecute or to ask for an explanation from those who so obviously breached the Act?

Ms FRANKLIN: I believe the former Electoral Commissioner spoke to the people concerned about the breach.

The Hon. BEN FRANKLIN: Spoke to but did not impose a sanction or undertake any other disciplinary action?

Ms FRANKLIN: Not that I understand, no.

The Hon. BEN FRANKLIN: Do you agree with the contention that this sends an awful message to people about whether they should abide by the Act, if they know from that incident and from this hearing that there will be no sanction and no discipline whatsoever?

Ms FRANKLIN: We would have to employ resources to follow through with a prosecution and investigate that matter following the election. We will take that on board.

The Hon. BEN FRANKLIN: I would be very grateful. I am not trying to be aggressive, but I do not think it was a minor example. It was an extremely serious breach of the Act in two marginal seats that I believe could have had an impact on the outcome. I would be grateful if you would take it on board.

Mr MARK TAYLOR: Is the commission facing challenges in identifying polling places and securing locations?

Ms FRANKLIN: It is challenging to find them. It is particularly challenging to find pre-poll venues and offices for returning officers. We normally make commercial arrangements for those venues. They are difficult to secure for a short period of time because people do not want to grant short leases. Finding suitable venues is another issue. Location and suitability are the two key challenges for us. The majority of polling places used on Election Day are schools or community halls. Much of the time they are available for us because we have a known date and are able to secure them. Where we need to put in place additional polling places that are commercial, in areas that lack schools or community halls, they are sometimes problematic to secure.

Mr MARK TAYLOR: Is it not the case that you could secure community facilities as pre-poll venues, knowing that the next date is four years away?

Ms FRANKLIN: Very often we do. The difficulty arises only on the odd occasion when community facilities are being used for other purposes and will be unavailable at the time that we wish to use them. That does occur.

Mr MARK TAYLOR: I note the comment in your submission about reviewing the traditional role of returning officers. Would you expand on that?

Ms FRANKLIN: My colleague Simon will expand on that.

Mr KWOK: Currently, the returning officer carries out a number of functions, including staff management, logistics, the issuing of votes, and managing health and safety. They also have to acquire a fair knowledge of technology and systems. The returning officer has to deal with increasing complexity and retain a greater amount of knowledge. The role has become multidisciplinary. Trying to find the right individual with that broad range of skills is increasingly difficult, especially as they are engaged only on a temporary basis. All our returning officers, unlike those employed by the Commonwealth, are engaged on a temporary basis only. The future role of the returning officer needs to be looked at, especially given that people now demand information and data in real time. Whether the role of the returning officer is fit for purpose, given the call for the counting of ballot papers to be finalised within a matter of hours, needs to be looked at.

Mr MARK TAYLOR: Is there a drive to increase the number of polling places and have smaller ones? I mean in metropolitan, not regional, areas. Is the philosophy that there should be more, smaller polling places on Election Day or is the aim to centralise them?

The CHAIR: Let us hope not.

Ms FRANKLIN: The answer to that is no. Obviously there is a staffing implication with that as well. As you probably know, we look carefully at the number of votes of each polling place and if it falls below a certain number then we will look very carefully at who might be impacted by that and see whether or not we can suggest a nearby polling place as an alternative.

Mr MARK TAYLOR: It is good to hear that, but anecdotally through the Federal election there seemed to be quite large queues and lateness in that people were lined up right up until 6 o'clock and were pushing to get in. I understand it is not under your bailiwick, but there must have been some underlying issue of Census data or obtaining information about demographics, et cetera, so what processes do you have in place to avoid situations like that?

Mr KWOK: First, I want to point out that attendance voting on election day is due to the increased participation in early voting that, as a percentage of the total number of voters, some percentages are dropping slightly. So that is a factor to consider in respect of determining the number of polling places. In respect of the selection of polling places, we do have specialists who look at the geo-demographics of the area, look at the population trends before we select the polling places and we also share the data with the Commonwealth. So we have clear data on each of the polling places for both the Commonwealth elections as well as State and local government elections, and we can make projections on the participation or the turnout for each of the polling places before we select them. I am not aware of any wide range of long queuing time in the polling places that occurred in 2015.

The Hon. PETER PRIMROSE: I also have a number of questions, but I will stick to one this time. I will ask you to take it on notice for the reason that I do not want your answer to give a menu to miscreants to go through a checklist of things that they might do incorrectly. I note that in your submission you are saying that you will undertake further work to enhance the security of vote and we will get on to that in a moment, but we have heard evidence again today pointing out that other non-attendance voting is also of a concern in relation to possible tampering or security and one that was raised, of course, is postal voting. While the number of postal voters is declining, the Government, and I think incorrectly, has introduced legislation which will allow local councils to have universal postal voting and has given you, in its current budget, \$1.5 million to begin introducing and developing that process.

That may, in fact, lead to an increase in postal voting if you have local councils conducting elections by universal postal voting rather than attendance voting. My question to you is what proposals do you envisage you could introduce and what sort of recommendations might we make if we are required to do so that may enhance the security of postal voting? Local government is not an issue for this Committee at the moment, but if it is introduced, and it will be allowed for under this legislation, it is very likely the numbers will increase and it would seem to me that that may be even a greater issue of concern for vote tampering than the iVoting system.

Mr SCHMIDT: We will take that on notice, thank you.

Mr ADAM CROUCH: Going back to Mr Franklin's comments earlier, we were given evidence of signage that was put up on election day that was approved and authorised—it had the "authorised by" line on there—but the colours of the signage were very similar to those of the Electoral Commission's. First, you have given evidence here today that online registration of material takes one to two hours to be approved. I would assume that all of the returning officers would have access to all of the approved information. Would that then be applied to signage as well as information that is being handed out? Could the same turnaround time be given to signage that is put on polling booths? Secondly, with regards to signage on a polling booth, do you see any issue with having the logo of either the party—the candidate or the third party organisation—identifying themselves? We see the tiny "authorised by" line but it might be a poster that is almost a metre wide. Do you see an issue whereby the logo of that organisation should not be shown on that same piece of information?

Ms FRANKLIN: I do not see an issue with having the logo on there. I think that would be fine.

Mr ADAM CROUCH: We heard evidence earlier today that somebody believed it would be onerous to approve signage for the front of a polling booth. Do you believe that could be approved within the same one to two-hour turnaround time that the electoral material is being handed out?

Ms FRANKLIN: I would have to look into it on a system basis.

Mr KWOK: We will have to look into the pending legislative change and the provisions for us to follow through, but the current registration process is that it is pretty efficient in that it allows us to register materials in a very structured manner.

Mr ADAM CROUCH: Effectively there would be no barrier—

Mr KWOK: If it follows similar provisions then, yes, but obviously that would be subject to what the legislative change may be.

Mr ADAM CROUCH: Following up on Mr Franklin's concern about issues on polling day, one of the suggestions was that the returning officer has a list of all of the approved material—signage and handout material. That person could do a cursory inspection of the polling booth prior to the polling booth opening, so rather than in the heat of the moment when everyone is lining up to vote, the returning officer could do a cursory inspection as they do with their own signage and make sure that everything that is there has been approved.

Ms FRANKLIN: Yes, certainly, though we would have to appoint additional staff to do that because some electorates have over 80 polling places and the returning officer would not be able to do that single-handedly, I would suggest, but additional staff could potentially do that. We would have to look at the logistics. We can certainly look into it.

Mr ADAM CROUCH: By doing it earlier before the polling booth opens, that could take away a lot of the heat and potential conflict that you discussed earlier. Would you be acceptable to getting it done early in the morning before a polling booth opens, obviously given the logistics of staff?

Ms FRANKLIN: Yes. We would need to look at that, but, yes.

The Hon. BEN FRANKLIN: You would not need extra staff, though, would you? The official in charge of the polling booth could come out and have a look.

Ms FRANKLIN: Certainly, and call.

The Hon. BEN FRANKLIN: It would only take three or four minutes to look at all of the signage.

Mr SCHMIDT: With respect, there may be issues of degree in argument. Once people become excited, it might be that the time is taken up.

Mr ADAM CROUCH: That is why doing it prior to the polling booth opening could help reduce the stress level that everybody goes through on Election Day.

Mr SCHMIDT: What I am hearing is, from our perspective, it is two steps—logistical requirements for approval within those time frames we have talked about previously and also logistical implications for actions on the day itself.

Mr ADAM CROUCH: Yes. I assume the polling booth manager, the returning officer, would be supplied with the data. For example, "Here are materials for candidates X, Y, Z"—be it posters or handouts—"and here are the sizes". So the returning officer would have an electronic record of all material on that day, be it posters or handouts?

Mr BEEREN: If I may add a little, a lot of that depends on the discipline of the providers of the information not doing it five minutes before a closing period, because that is a sheer practical issue of being able to have the time to observe what has been provided. We have all seen at 6 o'clock in the morning the very enthusiastic groups that race around electorates pasting everything that is not moving.

The Hon. PETER PRIMROSE: Coalition thugs.

The Hon. BEN FRANKLIN: At 6 o'clock in the morning; that is late.

Mr ADAM CROUCH: They have obviously slept in.

The CHAIR: Or they are nanny State Liberal Party members, as one of our other witnesses said. **The**

Hon. Dr PETER PHELPS: I did my booth for the Federal election at 4 p.m. the day before. **Mr**

BEEREN: There is a time constraint. There has to be a time limit, otherwise it is just ridiculous.

Mr ADAM CROUCH: As you said before, these things are applied electronically. In theory it could be approved in one or two hours. A record of that approved material is digitised and could then be supplied on line to the returning officer.

Mr BEEREN: I think I am suggesting that the one or two hours does not actually start at 6.00 a.m. on Election Day.

Mr ADAM CROUCH: Correct.

The Hon. BEN FRANKLIN: It would have to be pre-approved in the same way that how to votes and other material being handed out need to be.

Mr BEEREN: The nomination process is well defined, but you still get—

The Hon. BEN FRANKLIN: Exactly, all it would require is adding posters to the definition of registered material.

Mr ADAM CROUCH: Correct, you standardise it.

Mr BEEREN: We are certainly willing to consider.

Mr ADAM CROUCH: Mr Radcliffe, earlier we mentioned the concept of a digital voting option on Election Day, potentially an aggregated, improved or changed iVote system. Whether you do it on line away from polling booth on Election Day, or you do an iVote essentially in a booth, it then prints out the ballot and then you lodge the ballot. So there is obviously a checking mechanism should there be some discrepancies. Is that something that could be feasible to run a trial or to have a trial for the next State election, if that were possible?

Mr RADCLIFFE: Yes, the iVote that we specified and procured for 2015, we specified as well an attendance mode of voting for iVote. It was as you described. It was set up in that case for paper mark-off even, but then the voters when they voted, there would be a paper ballot essentially printed. That would go into some form of specific ballot box. So then you have the paper of the vote and of course you have the data electronically, which can be gathered centrally. Of course we did not have legislation to enable the use of it, but technically it is not an issue. I will just flag the cost structure of doing something where you have technology

widespread in polling places compared to the current iVote where the infrastructure is merely central. Obviously it is quite a high cost proposition. But if Government were supporting that then technically it is feasible.

Mr ADAM CROUCH: Another matter raised in evidence was that we could look at the same equipment, the same hardware could be utilised for a Federal election effectively, or a council election or a State election so you break that cost down over the three different jurisdictions effectively. So rather than just bringing out the iVote digital booth for State elections that cost be shared across all three levels.

Mr RADCLIFFE: Yes, you have got the two obviously largely under our bailiwick but you have got to have the co-operation at the Federal level. I might just mention that we are working with our colleagues in Western Australia who are looking to trial iVote for its statewide election in March pending legislation. We are very keen to co-operate and essentially share what we have learnt and share the cost of supporting iVote with other commissions.

The Hon. Dr PETER PHELPS: In relation to iVoting, is it possible for iVoting details to be forwarded to political parties and candidates in the relevant registered iVoter's electorate?

Mr SCHMIDT: In the way that registered postal voters are?

The Hon. Dr PETER PHELPS: Yes.

Mr RADCLIFFE: We obviously gather, as we mark them off—

The Hon. Dr PETER PHELPS: Emails and mobile phones—

Mr RADCLIFFE: We collect that data if there is legislative provision to provide it.

The Hon. Dr PETER PHELPS: Is there any feasibility issue with providing that?

Mr RADCLIFFE: At the end of the election, no.

The Hon. Dr PETER PHELPS: No, not at the end of the election.

Mr BEEREN: I think there is some confusion about what you are suggesting. Are you suggesting that the contact information that is required for the iVote process is provided to political parties before the election?

The Hon. Dr PETER PHELPS: Yes.

Mr BEEREN: I think we will have to take that question on notice.

The Hon. COURTNEY HOUSSOS: The question has two parts. There is a question of whether you could communicate the information directly to the political party or to the candidate at the time in the same way as when they register for the iVote they get an email, and that information would then be provided to political parties, and also in the question is whether it could be provided to them afterwards in the same way that it is under section 138.

Mr BEEREN: The answer remains the same.

The Hon. Dr PETER PHELPS: I agree that that should be easily done—

Mr BEEREN: But you are dividing it up into two—

The Hon. Dr PETER PHELPS: During the election period if it is not technically feasible for the Electoral Commission to provide electronic HTVs for the iVote process then we would relieve you from that burden if you could provide the parties with real time requirements so that then we could provide HTV material.

Mr BEEREN: I assume within the same sitting session of the elector? Is that the basis of the question?

The Hon. Dr PETER PHELPS: Yes.

Mr BEEREN: I think the answer is probably the same.

The Hon. Dr PETER PHELPS: I want to raise the issue of Dr Vanessa Teague. In testimony given to the Committee an allegation was made that the New South Wales Electoral Commission made a complaint to the University of Melbourne regarding Dr Teague. Is that correct?

Mr RADCLIFFE: As I understand, yes that is correct.

The Hon. Dr PETER PHELPS: What was the nature of that complaint?

Mr RADCLIFFE: I personally did not make the complaint. All that I am aware of was that it was regarding the perception of responsible disclosure of a software vulnerability. Obviously Dr Teague and

Professor Halderman from the United States made a disclosure during the election of vulnerability to a FREAK attack through associated software.

The CHAIR: I will interrupt proceedings for the moment. As we are discussing sensitive material, does the Committee have a view that this part of the hearing should be conducted in-camera or we take this transcript not on the public record?

The Hon. Dr PETER PHELPS: No, I think this is an important issue to raise.

The Hon. ROBERT BORSAK: I think this should not be on the public record.

The Hon. PETER PRIMROSE: I think the Chair should take advice from the secretariat.

The Hon. Dr PETER PHELPS: I will withdraw my question.

The CHAIR: Thank you.

The Hon. Dr PETER PHELPS: Who does the counting software for the Legislative Council? Is that done in-house or do you outsource the actual counting software—not the OCR but the actual counting?

Mr KWOK: This is the proportional representation computer count?

The Hon. Dr PETER PHELPS: Yes.

Mr KWOK: It is outsourced to a company called CGI.

The Hon. Dr PETER PHELPS: Were you made aware of the potential bug in that software that misallocated probabilities and could in some circumstances have led to incorrect outcomes?

Mr KWOK: We were alerted to that flaw in the software recently, and that was by Dr Teague.

The Hon. Dr PETER PHELPS: Do you consider that to be a serious flaw in the software?

Mr KWOK: It is obviously serious enough that it affected one of the more than 200 contests that were conducted in 2012. So yes I would consider it serious.

The Hon. Dr PETER PHELPS: Does the problem stem from the current necessity, the entrenched provision in the Constitution for a sampling method? In other words if the sampling method were removed and each vote were counted, like the Senate, would that remove a large problem of having to get the sampling algorithm correct?

Mr KWOK: I would strongly support that suggestion in that it would remove a lot of complexity in the software and I also note that the flaw in the software affected the local government election contest. Yes, we support them.

The Hon. Dr PETER PHELPS: Would the count be done quicker if the sampling provisions were to be removed or would we look at the same timeframe but it would be a simpler code to actually have to write?

Mr KWOK: Because it is computer-counted the timeframe would not be faster if we removed the randomisation but the complexity of the software would certainly be reduced.

The Hon. Dr PETER PHELPS: Is the current code freely available?

Mr KWOK: No, it is not.

The Hon. Dr PETER PHELPS: Why would the code not be available given that it is a basic counting software? There are presumably no security implications because it would be a closed state system, would it not?

Mr KWOK: We have a policy of not publishing the software in an open source manner. We take the software through a certification program to ensure that the program complies with the counting logic.

The Hon. Dr PETER PHELPS: How was the bug found? Presumably it was found because you had asked someone, "Can you break this?"

Mr KWOK: With some facilitation from our previous CIO, the academics have independently developed a simulation program that follows the same counting logic as the proportion counting, representation counting logic. They found this flaw through an independent development of their own simulation program. So I want to note that that was done without accessing our source code.

The Hon. Dr PETER PHELPS: I just want to make this clear. I am going to be terribly unfair; I am going to ask you for a policy position: that is, if there were to be a recommendation that the sampling be

removed and that a full vote—a full count—be applied to New South Wales upper House elections, would that have the support and endorsement of the NSW Electoral Commission?

Ms FRANKLIN: The removal of the randomisation of the count would certainly have our support. In terms of publishing the code for that computer count system we would have to look at the policy position of the commission before we committed to that.

The Hon. Dr PETER PHELPS: The problem is: why fix an ancillary problem of the main problem? Why not fix the main problem? The main problem is that we have to draw up a code which relies on a potential error in sampling. Why not get rid of the sample method and then just have a straight count?

Mr SCHMIDT: Yes.

The CHAIR: Dr Phelps, I have taken some advice on that other matter. I am more than happy for you to proceed along those lines. I am advised there is no objection for you to proceed in that matter.

Mr SCHMIDT: Before Dr Phelps starts I would just like to reinforce that the party who was involved in that matter is no longer with the commission. So any comments which are being made now are not informed by the first-hand experience of the person who was involved. So I do have some caution.

The CHAIR: You may wish to take questions notice or not have an answer because of the relevant factors.

The Hon. Dr PETER PHELPS: Would you agree that it is a bad look for you to effectively be shooting the messenger when they discover a flaw in your system?

Mr SCHMIDT: From my understanding of the circumstances of that incident—and looking at it as a person who has come to it recently—there were things which were done by the parties who identified the flaw which might have been done in a better fashion, and I think there might have been things that we did in response which could have been handled in a different fashion, too.

The Hon. Dr PETER PHELPS: So, if you had been Commissioner, on the basis of what you know, you would not have lodged a complaint with that person's nor any person's employer.

Mr SCHMIDT: I am sorry, that is hypothetical so I will not answer that.

The Hon. COURTNEY HOUSSOS: I go, again, to the iVote system. Is there a current tender for the iVote system? Obviously we heard from the provider earlier this morning. Are you anticipating that in the future if we were to continue with the iVote system that that would be maintained with them?

Mr RADCLIFFE: Firstly, I will clarify that there is not a single provider of the iVote system. iVote is comprised of a number of components. A large proportion is the intellectual property of the Electoral Commission. It was developed by contracting suppliers like CGI for us. Scytl provides the core voting system, which is a core central part—the element that collects the votes and encrypts the votes. The contract which was signed in 2014 was a contract with Scytl to see us through the 2019 State election. So at this stage there is no planned procurement.

However, there are a couple of things that we have already commenced discussion on with Scytl. Those are things coming out of the review that we did post the election. One of those is looking ahead to the potential of having it for local government. We might have a local government and State by-election coincidence—seeing that it can support the votes at the same time. The other goes to the language issues that were raised earlier. We have so far only delivered it in English. We would like to support multiple community languages with iVote. That would also be a change. There might be a change to the contract—a change made to bring those things in—but there is no tender going out for a new system.

The Hon. Dr PETER PHELPS: You mentioned different languages. Is there a spoken iVote? For example, if I were blind would I be able to go to a polling booth in an electorate, put on headphones, and be able to cast a vote privately and securely at the current time?

Mr RADCLIFFE: Let me just cover that. We have dealt extensively with Blind Citizens Australia and Vision Australia in terms of accessibility and a spoken version. That was offered in the most recent election in two ways. There is telephone voting, where you call up an automated voice that delivers all the instructions, reads the ballot and you use the phone key pad to vote. We had that in 2011, as well.

In this past election we also had a human operator whom a person could dial up, speak to, give their iVote number and PIN. That operator would key in the vote, essentially on the web, and cast a vote that way. Given the demographic of people who are blind or with low vision being elderly, there are number who are more comfortable with speaking to a real person. We found that the split was about fifty-fifty.

We also found that a large number of people who are blind or with low vision prefer to use the internet. That has increased as a proportion since the previous election in 2011. They will be using the VoiceOver or JAWS or other software that reads it to them.

The Hon. Dr PETER PHELPS: Did you saw that the proportion had increased? I thought we had evidence that it had decreased. There was an increase in remote and regional use of iVoting but there was a decrease in vision-impaired and blind use of voting.

Mr RADCLIFFE: No, there was not a decrease. There was an increase in blind and vision impaired.

The Hon. PETER PRIMROSE: That was the evidence.

The Hon. Dr PETER PHELPS: Okay, that is fine.

Mr RADCLIFFE: What I have said is that the proportion of blind people voting with the internet had increased slightly, as well. It is surprising that an iPhone is a very common device used by people who are blind because of its accessibility. This is one of the challenges that we face with accessible voting in polling places. When a person is voting at home they are using a device they are familiar with; when they go to a polling place and they are forced to use a device provided by the commission they may not be familiar with it. A person may use JAWS but we have chosen to use Apple and VoiceOver. It is just different so you introduce some additional challenges when you introduce that technology in a polling place.

The Hon. COURTNEY HOUSSOS: You indicated that iVote will use the current provider until after the 2019 election. Is that the idea?

Mr RADCLIFFE: Yes, that is our current contract.

The Hon. COURTNEY HOUSSOS: That is fine. I just wanted to know what the arrangements are. In terms of the data access, when someone registers for an iVote, what data is collected and where is it stored?

Mr RADCLIFFE: We obviously have details already on the roll, so the first thing we do is match them to the roll by collecting information that is already on the roll to identify themselves. We then ask for additional information in terms of a means of delivering their iVote number to them. They supply us a PIN, we need to give them an eight-digit number we call the iVote number. We offer a number of ways of delivering that to them and for that purpose we collect either an email address or a mobile phone number. If they want we also collect a landline phone number because we can make outgoing calls from our call centre. That was originally offered primarily to people who are blind or have low vision. That is then also collated with the registration.

The Hon. Dr PETER PHELPS: The Physical Disability Council of NSW contend:

NSW EC conducted a general survey seeking feedback from people using iVote with the following findings ...

- There was lower than estimated take-up rate among blind or vision-impaired voters and voters with a disability.

Mr RADCLIFFE: Lower than?

The Hon. Dr PETER PHELPS: A lower than estimated take-up rate.

Mr BEEREN: Estimated by whom?

Mr RADCLIFFE: Whose estimate, yes. I will say that in 2011 we had very rough estimates because we had no idea really to start with just what the take up might be amongst that group. In 2011 it was lower than we had hoped for, which is why we have had a lot stronger engagement with reference groups this time.

The Hon. Dr PETER PHELPS: That is okay. If you can say that in fact you had a much better take-up rate then that is fine.

Mr RADCLIFFE: We did absolutely, for both groups.

The Hon. COURTNEY HOUSSOS: In terms of people who have conducted an iVote, does that appear on the electoral roll or is that stored for a period of time? What is done with that data?

Mr RADCLIFFE: This goes to the other systems. Most people here could answer this. We record the channel of voting as part of the mark off of the person. A person's record in our system—not the iVote system but central system—might show that they registered for iVote, that they applied for a postal vote, that they actually had a vote accepted that was a postal vote or an iVote, obviously not both, and there is a central record there of the channel through which you voted.

The Hon. COURTNEY HOUSSOS: How long is that kept for?

Mr BEEREN: We still have that data from 2015.

Mr SCHMIDT: How long do we keep our records for?

Mr BEEREN: There is no limit.

Mr RADCLIFFE: There are different standards.

Mr BEEREN: The data is kept in a database. There is always the issue about how you dispose of electronic data after six months of an election. We keep the data because legislation requires us to provide if requested by parties information about the voting channel that people undertook. So we keep it for that purpose.

The Hon. COURTNEY HOUSSOS: And that is provided or can be provided?

Mr BEEREN: It is provided if the parties request it.

The Hon. COURTNEY HOUSSOS: If a registered party requested tomorrow to get a list of the people who voted through iVote—

Mr BEEREN: In 2015, we could provide that.

The Hon. COURTNEY HOUSSOS: Great. Going back to some previous testimony, the provider told us that "interested parties" had the opportunity to view the reconciliation between the encrypted data and the electronic ballot box. Are they talking about what happened on election night with the pressing of the button?

Mr RADCLIFFE: That comes to our verification, which was newly introduced for 2015. That was an issue that came out of one of the recommendations of the standing committee from the 2011 inquiry. The set-up of the system was that we had the Scytal core voting system. We had created a verification service, which was a telephone service. A voter could phone up after the event—after they had cast their vote, that is—and prior to the close of the voting period they could enter in their iVote number, their PIN and the 12-digit receipt number they received at the moment they voted. They could key in those numbers through the phone interface and then it would read back to them their vote in both ballots—just name, preference one, preference two and so on. Then they could raise an issue if they felt the vote was not as they cast.

What was being referred to then was our check at the end of the election that this verification service, which had votes—we got CGI to write the software, it was hosted by a different hosting provider in physically different data centres from the core voting which was Scytal software. We had two academic teams, people from Macquarie University and people from the University of New South Wales, who were provided test data. They wrote their own programs to essentially take a pool of votes that were decrypted, to go to the count, we effectively published them after the election anyway, and re-encrypt them to the point that they could match them to these votes in this verification system or service which was separate. Independently they did that.

We had scrutineers from a couple of parties who attended. An invitation went out to all the parties at the time. We had the academics and we had our auditor there. In the end that happened on the Wednesday because there was a delay on the election night and academics were not available. The first time they were available was the Wednesday. But the auditor had custody of the USB keys that had the data on that they were to match.

The Hon. Dr PETER PHELPS: What percentage of voters actually sought validation of their iVote?

Mr RADCLIFFE: The usage of the verification system was about 1.7 per cent in total, which was lower than we had expected. We would prefer it to be higher. We had had some indications from when verification had been used in a Norway election that led us to believe it might be quite high. In hindsight we now know that we should have pushed it more strongly. In the IPSOS survey that was mentioned earlier we were quite keen to understand why such a low proportion did actually choose to verify their votes. The feedback that was obtained from that IPSOS survey was along the lines of that they trust the Electoral Commission, they did not see any need to verify. Next time around we will look to try to encourage more people to verify.

The Hon. COURTNEY HOUSSOS: Of that 1.7 per cent, how many people failed to verify?

Mr RADCLIFFE: We would consider a failure to verify as someone that essentially contacted us to say that it did not verify.

The Hon. COURTNEY HOUSSOS: You cannot just tell if someone logs in, tries to verify and cannot?

Mr RADCLIFFE: I will explain. We had the situation where we had seven people through the course of the election hit the button on the Interactive Voice Response [IVR] system after verifying their vote to say it was not as they cast it. Due to privacy concerns we had not made it that easy for ourselves to actually link that to an individual, but we were able through caller ID to identify a couple of phone numbers. I was able to actually

personally speak to two of the individuals that had pressed the number on the keypad that indicated the vote was not as confirmed. We knew that none of the seven had come through to the call centre because when you press that button it transfers you immediately to the call centre where we expect to hear what the issue is. In both those cases they said, "No, my vote was fine, it was just as I had cast it, but after it I hit the wrong button on the phone and when I realised I just hung up." We were not able to contact the others. So we have to consider the anonymity and the privacy of the verification and our ability to follow up if we have any concern that someone was trying to flag an issue and changed their mind. We would like the opportunity if we can to follow up just to get greater confidence, but in that case out of the seven we were only able to contact and speak to two of them.

The Hon. COURTNEY HOUSSOS: That might be something that we consider in the future.

Mr RADCLIFFE: Yes, absolutely.

The Hon. Dr PETER PHELPS: But do we not then fall into the same problem, and that is the historical opposition we have already had to a H.S. Chapman Society limited vote tracing arrangement? Aren't you effectively then bringing in an electronic form of limited vote tracing, which the Electoral Commission has always opposed on a paper level and which the Labor Party has always opposed?

Mr RADCLIFFE: I think there is a technological solution in the sense that at the point of essentially pressing that selection, it is not difficult to offer capturing the phone number and offering them a second chance to reaffirm that that is actually what they are trying to say, so we reduce the false positives. There are a number of ways in which we can do it while maintaining the anonymity of the vote and the voter.

Mr SCHMIDT: But Dr Phelps does raise a valid point, which will have to be considered.

Mr RADCLIFFE: Absolutely.

Mr ADAM CROUCH: Regarding the very well publicised missing boxes of the Legislative Council ballot, we have heard evidence that it was human error. That is also outlined on page 78 of your own submission. Given the fact that I would assume it would have been taken in the same file that was given to be printed for the printed ballot, how could such an error occurred? What steps have been put in place to ensure that it will not recur? What are you doing to minimise the risks of those types of events happening? Obviously, it is very embarrassing that we can print millions of ballot papers correctly, but using a digital file somehow was in error.

Mr RADCLIFFE: Yes. It is interesting. I was just participating in local government ballot paper proofing yesterday. It was a lapse on our part that our proofing of the digital ballot did not take into account the base data in the same process that the proofing of the paper ballots went through. As you say, it is embarrassing and we have changed the process that will be followed in the future to make sure that the proofing is every bit as rigorous as is done with the paper ballots.

Mr ADAM CROUCH: The submission also states that there were performance issues with the iVote registration system, which I think Ms Houssos covered previously. Again, what steps have been taken to reduce that risk of those things happening in the future?

Mr RADCLIFFE: We have only run two general elections with iVote so far and obviously we are learning.

The Hon. Dr PETER PHELPS: Will you be running iVote in the by-elections which are coming up?

Mr RADCLIFFE: Yes. The legislation supports running it at all State elections and we have run it at every by-elections since 2011, so it is our expectation that we would.

Mr ADAM CROUCH: In your expert opinion, do you think the risks associated with internet voting are higher than the traditional forms of voting that we currently use with the good old pencil and paper?

Mr RADCLIFFE: This is an interesting question. We have a view that the risks are not too dissimilar between the technology voting and the paper voting. Certainly, paper voting, when you are talking about postal voting in particular, is largely what it has been replacing and it is certainly more robust than postal voting. We had more than 5,000 postal vote packs sent overseas that accounted for 129 votes making it into the count. That is a lot of people. Two thousand of those actually cast a vote through iVote, but a much higher proportion of people who apply for a postal vote just do not get to vote at the end of the day compared to iVote, which has a very low proportion of people who end up not voting. It is something that we are keen to understand. What are the comparative risks? The Electoral Regulation Research Network [ERRN] awarded two research grants.

Rodney Smith worked with the commission on his research a few years ago and he is leading a team with four computer science academics from Macquarie and New South Wales universities. Rodney is at the

University of Sydney and there is another person at the University of Sydney in the political social science realm. We have the Western Australian Electoral Commission and an academic in Western Australia as well all together. The brief from the ERRN is to look at all voting channels—various paper channels and electronic voting—and look at them from the perspective of all stakeholders, not just voters but parties and candidates, and from the perspective of the electoral management bodies—the issues, the risks and difficulties in delivering those channels. Part of what we will be able to do with that research, with the computer scientists and political scientists working together, is look at the processes that we follow and look at the risks and difficulties of all of them and get almost a comparative assessment. Rather than it just being an expert opinion, we will have data that actually gives an informed opinion.

The Hon. BEN FRANKLIN: I wish to talk about third party campaigners and a specific issue that involved The Nationals. The Nationals advised us that the commission failed to act effectively when an unlawful third party campaigner aired television advertisements in the final week or so of the campaign. The commissioner's response, eventually, was that the offenders had been told to stop. My view is that with significant unlawful television advertisements—in this case they were professionally developed and very effective—and the impact that they can have on an election result—and those advertisements were aired in the final four or five days before the election's electronic blackout—why did the commission take four days to respond to The Nationals on this issue regarding the Wilderness Society, and only respond the day before the blackout? Why did the commission not to pursue immediate enforcement of the law?

Ms FRANKLIN: I believe that the former Electoral Commissioner would have spoken directly to that party, taking the line of our enforcement policy to try to talk to those individuals to get those advertisements removed.

The Hon. BEN FRANKLIN: But, with respect, they did not register as a third party campaigner.

Ms FRANKLIN: Right.

The Hon. BEN FRANKLIN: They were breaching the law already, so why therefore would they, if spoken to politely, say, "Oh, yes, we are terribly sorry", when they knew perfectly well that they were breaching the law? I would contend that speaking to them was nowhere near enough.

Ms FRANKLIN: I would have to go back and look through all of our records to be truthful and totally understand what occurred at that particular time.

The Hon. BEN FRANKLIN: Okay. Could you do that, and could you provide the Committee with a full response of the actions taken in response to that complaint when a body, which was in fact a third party campaigner that was looking to impact the outcome of the election but was not registered, aired those advertisements which did impact on the campaign? Could I also ask you—and, again, you may not want to do this now—what action you have taken against those people who breach the law in such an egregious way? I presume you would prefer to take that on notice as well.

Ms FRANKLIN: I will certainly come back to you on that.

The Hon. BEN FRANKLIN: Could I ask also in a broad level what internal processes you have in the commission to monitor unlawful third party campaigns and specifically who is responsible for this area?

Ms FRANKLIN: In the whole, I think we are very reliant on people informing us of particular breaches, alleged breaches, that they see and taking action from that in terms of responding to those particular issues.

The Hon. BEN FRANKLIN: So there is no person who is responsible specifically for monitoring that part of the Act?

Ms FRANKLIN: For monitoring the Act, certainly.

The Hon. BEN FRANKLIN: No, sorry—for monitoring unlawful third party campaigns and dealing with those in a timely manner. This does not fall under the gamut of anyone's specific responsibility?

Ms FRANKLIN: There is responsibility for, obviously, looking into alleged breaches from those particular incidences. In terms of monitoring, I believe there is some monitoring that occurs. But in relation to the breadth of various electoral material and campaigns that occur, I cannot say categorically that we would be across every single one that actually is in process at the time.

The Hon. BEN FRANKLIN: Which is fine. That is fair enough. But when one is advised, as in this case, and in effect nothing happened because they continue to advertise until the electronic blackout—in fact, you were advised on 20 March 2015. They continued to advertise quite heavily on television until the electronic

blackout, continued to handout material after that, and were not a registered third party campaigner, so there must be some sanction. There must be. This goes back to the original point that I made about the signage issue. If these laws are not applied, if there is no sanction, then there is no point in having them and people will realise very quickly that the Electoral Commission is a toothless tiger and will not act and therefore they will run amok. I will certainly be pushing hard for recommendations to ensure that the Electoral Commission has the power, if necessary, to ensure that these sanctions are imposed so that does not happen. Could I ask that also in your response on notice that you consider what legislative muscle you would like to ensure that when we have a good system, a regulated system, a system on which we have worked together as to how it can be done in the best interests of the people of New South Wales, what we can do when people blatantly flout it and decide to run a campaign to impact the outcome of the election anyway?

Mr SCHMIDT: Mr Franklin, if I could add something?

The Hon. BEN FRANKLIN: Please do.

Mr SCHMIDT: We would, of course, appreciate any recommendations to increase the suite of powers available to us but hand in hand with that we would also appreciate your support for appropriate resourcing to the extent that it requires a greater deal of activity by the commission.

The Hon. BEN FRANKLIN: I understand that. I have always been a strong supporter of increased resourcing for the commission. That brings me to the next issue. The financial requirements of the parties are incredibly high and burdensome as to what you require from us in order for parties to be transparent and accountable. That is as it should be; it is utterly appropriate. However, let us look at the case that I have just raised, the campaign run by the Wilderness Society, which shows a potential double standard. Clearly they spent at least five and possibly six figures on that unlawful campaign. Not only was it unlawful because it breached the Act but they also did not lodge a disclosure or a return on either their expenditure or their donations received. How are you satisfied in this situation that they did not receive unlawful donations, prohibited donations, that they did not receive donations that were above the cap, and what can you do now and what would you like to be able to do to enforce the law in this and other cases?

Mr SCHMIDT: I think we would like to take that on notice.

The CHAIR: We are very close to our 4.00 p.m. timeline. We will go round the table once more. I am happy to run over time but I ask that members to limit their questions to those really important issues and get to the crux of them as quickly as we can.

Mr ADAM CROUCH: The Committee received a submission from the Electoral Commission questioning a common code of behaviour for parties and candidates to sign a nomination to prevent situations as that we have heard about today. We have seen a rapid growth in third party involvement in State elections. Should that same code of conduct be signed off by those registered third parties?

Mr SCHMIDT: I think it is fair to say that if we were to develop such a code of conduct we would obviously look at the range of people, organisations, parties and the roles that they play should be covered by it.

Mr ADAM CROUCH: As Mr Franklin pointed out, it should be made very clear to those who sign that should they breach the agreement then the severest of penalties will apply.

Mr SCHMIDT: Yes.

The Hon. PETER PRIMROSE: I was going to talk about the difference between commission powers and judicial powers but I will leave that to the witnesses to respond appropriately. I will put my other questions on notice.

The CHAIR: Of those who called the verification service how many failed to retrieve any vote?

Mr RADCLIFFE: This was raised with us so we had previously done a little bit of analysis to try and figure out if there was any concern there. We looked at it and found 627 callers to the verification service out of the total of 5,300 calls had entered their credentials wrongly in some way—that could have been the PIN, the iVote number or the receipt number. It is hard to isolate from that how many then called back again, tried a second time and got it right. You are asking people to key in 26 digits without making a mistake, and we are all human. The best estimate we could come up with was that there might have been about 200 voters who failed to enter a valid receipt number. I think the argument goes that an attacker would have delivered a false receipt in that case, but out of that 200 equally I think a more likely explanation for most is that it is just human error in entering the numbers and, as we experienced the survey questions, the persistence of someone and the difficulty of putting in correctly all these numbers, given the high level of trust generally in the commission, I think a large number of people just abandoned rather than kept retrying. Again, it is a very small number.

The CHAIR: In view of the time, you might like to take this question on notice. Can you provide the Committee with some information as to how we could better create a system to update those voters who are deceased, particularly close to the election, working in conjunction with Births, Deaths and Marriages? That has always been a bugbear of mine, particularly as political parties we sometimes correspond with people who have passed away. Is there a system that helps you, helps us as elected people and no doubt candidates with this?

Mr BEEREN: There is but in the interests of time I am happy to respond to the question on notice.

The CHAIR: Would you have any issues if we made sure that any material like how to votes and the sorts of things we do during an election campaign also related to social media, robocalls, emails, Facebook and those types of things with "this has been authorised and printed or published by X, W, Z" and, as suggested by another Committee member, a logo on that?

Ms FRANKLIN: We will have to take question on notice and have a look at it.

Mr SCHMIDT: It is a question about legislative scope and jurisdictional reach when you get to some of these electronic medium.

The Hon. BEN FRANKLIN: Could also add text messages to that group? It is a relevant issue in terms of what can be done.

Mr SCHMIDT: Yes.

The Hon. ROBERT BORSAK: Does the commission have a view on the fiasco around the No Land Tax Party and what occurred not only arising from the non-payment of electoral booth workers but also the way they advertised for staff? If the party still exists and, if it is still registered, whether it should be registered? What should be done with the offices of that party should it be found that it has not paid anybody and probably had no intention of paying them?

Mr SCHMIDT: I am going to give you a very black and white answer. We act within the confines of what the legislation enables us to do and to the extent that a party does not pay its workers or engages in other activities which are outside the purview of the legislation there is a limit as to what we can do.

The Hon. ROBERT BORSAK: I appreciate that is the classic bureaucratic answer but I asked whether you had a view on where we might go?

Mr SCHMIDT: Not at this stage.

The Hon. ROBERT BORSAK: Do you want to take it on notice?

Mr SCHMIDT: I do not think I would like to pursue that particular line at this stage.

The Hon. ROBERT BORSAK: You do not want to provide the Committee with any guidance?

Mr SCHMIDT: If you put that question on notice we will of course consider it.

The Hon. BEN FRANKLIN: I have two quick questions. The first is about the registered material that you need to put out for polling day, which predominantly are how to votes but also some little pamphlets and so forth. The system whereby people could see that in returning offices in the State crashed on the day for a few hours at least and we were not able to see them in a number of electorates. In Tamworth, for example, once the system did get up and running we were not able to see them all.

I understand that there are errors in these situations. You may want to take my questions on notice. Firstly, what is being done to make sure that does not happen in the future? What has been done to address it? How would you feel about this material being put online so it is made available for everyone in the State to see on the morning of Election Day? This has come up in evidence. That would mean that at 8 o'clock the how to votes and the posters that can be distributed would go online on the day.

Mr KWOK: We would support that.

The Hon. BEN FRANKLIN: Could you respond to the other issues about what actually happened and, if we do not go down the other line, what will be done?

Mr KWOK: We will take those questions on notice.

The Hon. BEN FRANKLIN: I turn to the depositing of financial disclosures and other items at the commission's office by a party. Do parties or individuals get receipts when those items are left?

Ms FRANKLIN: We do not have our funding and disclosure director here, so I apologise. We will check that for you and get back to you with an answer on that.

The Hon. BEN FRANKLIN: If that does not happen, I would be grateful if you would consider if that system could be implemented.

Ms FRANKLIN: Certainly.

The Hon. ROBERT BORSAK: Going on evidence we have received in relation to the iVote system, it currently caters for the visually impaired, those with a disability, those who live in remote areas or those who are going to be outside of New South Wales on Election Day. Does the commission anticipate rolling it out into any other applications at the next election, in 2019?

Mr SCHMIDT: Into other categories of individuals?

Ms FRANKLIN: We are confined by legislation as to—

The Hon. ROBERT BORSAK: That is where it is limited to at the moment?

Ms FRANKLIN: Correct.

The Hon. COURTNEY HOUSSOS: We have received a lot of submissions and testimony saying that there were issues with the Legislative Council iVote ballot paper and the fact that it just landed on those first columns. Was any consideration given to randomising the screen before the election?

Mr RADCLIFFE: No, it had not been observed in the 2011 and so there was not a consideration of it in the 2015, but we obviously had a lot more data, a lot more people, so we saw informal voting increase slightly on iVote. It was still low, obviously, but you can leave a blank ballot. I think we saw a bit more of a donkey vote occurring, which showed that bias. It was discussed immediately afterwards, and Antony Green did some helpful analysis on that. We have already signed the change request last year with Scytl, the provider, to randomise the ballot as it appears on the screen, so that every column has an equal and even chance of being the column in the centre of the screen. Obviously, that is something we cannot do with the paper ballot, but we think that is the fairest approach.

The Hon. COURTNEY HOUSSOS: We talked a lot about that, so that is excellent.

The Hon. BEN FRANKLIN: That takes care of one recommendation.

The Hon. COURTNEY HOUSSOS: What opportunities did political parties have to view the iVote system prior to it going online?

Mr RADCLIFFE: It is hard to say; what is "to view"?

The Hon. COURTNEY HOUSSOS: The opportunity to participate in a simulated iVote.

Mr SCHMIDT: To clarify, are you talking about when it was first introduced in 2011?

The Hon. COURTNEY HOUSSOS: No. In between the ballot draw and before the beginning of the iVote—in that period—were political parties or candidates provided with the opportunity to check it out?

Mr RADCLIFFE: All the engagement was with the party and candidate briefings. Typically we attended and did a show and tell on iVote and explained it all.

The Hon. COURTNEY HOUSSOS: But that occurred well before the close of nominations.

Mr RADCLIFFE: Yes. As you heard earlier, in that time before the State election—you have a bit more luxury with the current local government—with nominations closing on Thursday at noon and iVote and early voting opening on the Monday, it is a very tight time frame. We are under a lot of time pressure during that time frame, but we go through the process of building a ballot then proofing it. There is an extensive amount of testing of iVote that has to happen before it goes live for voting.

The Hon. COURTNEY HOUSSOS: Would you be opposed to giving political parties and candidates the opportunity to do that?

Mr RADCLIFFE: My only concern, having project managed through that very intense period, is the logistics would have to be set up in a way that it does not impact your ability to deliver it on time.

The Hon. COURTNEY HOUSSOS: They could come into the commission and see it.

Mr RADCLIFFE: I am sure that there could be ways—

Mr SCHMIDT: We would be happy to explore the opportunity.

The Hon. BEN FRANKLIN: In the same way that political parties have the opportunity to receive a sample ballot paper for their how to votes, we contend they should be given the same opportunity to view the ballot paper online.

Mr RADCLIFFE: Yes.

The Hon. COURTNEY HOUSSOS: We have talked about lengthening that time period to view, so the political parties were to have more of an opportunity—

Mr RADCLIFFE: That would make it a lot easier to have something that is worthwhile and does not cause delays.

The Hon. COURTNEY HOUSSOS: We have questioned the NSW Electoral Commission on specific issues, but overall we think you do an excellent job. I want to mention two things in particular: First, the counting at Carriageworks, which was an experiment and we found quite productive. Do you anticipate doing this again in the future?

Mr KWOK: We do.

The Hon. COURTNEY HOUSSOS: Will the commission continue to data enter each ballot paper? Obviously that was the first time you did it.

Mr KWOK: We do.

The Hon. COURTNEY HOUSSOS: That is great news.

The Hon. Dr PETER PHELPS: I am happy for you to take my questions on notice. Would you support the public release of more information about iVote including public release of the system source code? If not, what mechanisms do you think could be introduced, if any, to allow for more opportunities to scrutinise the system, particularly by people who might not have been identified by the Electoral Commission but who may have a private or academic interest in source code of the iVote itself?

Mr SCHMIDT: We will take that on notice.

The CHAIR: The Electoral Commission enjoys the confidence of this Committee, from all sides of politics. Obviously, today we are trying to nut out a few issues, but overall the work of the commission is fantastic and we expect that it will only get better. If we have any further questions, would you have any issue with responding to those questions within the next couple of weeks?

Mr SCHMIDT: No problem at all, and thank you for the opportunity for us to attend today.

The CHAIR: Thank you for your fifth day in the office.

(The witnesses withdrew)

Dr VANESSA TEAGUE, University of Melbourne, affirmed and examined

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

The CHAIR: Welcome back. Thank you very much for your evidence last week. Before we start, do you have any information in relation to the procedural questions or do you have any other questions?

Dr TEAGUE: No.

Professor GORE: No.

The CHAIR: Can you tell us in which capacity you appear before us today?

Dr TEAGUE: In a private capacity.

Professor GORE: I represent the Australian National University.

The CHAIR: Would either of you or both of you like to provide an opening statement before we go into questions?

Dr TEAGUE: We certainly have plenty to say, but perhaps the best thing is to ask which of the many things you consider most important.

Professor GORE: We would prefer that you ask us questions first before we—

The CHAIR: We can do it that way; that is certainly not a problem.

The Hon. Dr PETER PHELPS: What did you hear in the evidence today which caused you concern?

Dr TEAGUE: Privacy, verifiability, scrutiny and evidence. You have got votes out of the system; how did you check that they were right? Did your scrutineers get the chance to check? Did the voters get the chance to check? Where is the evidence that those numbers that came out matched the voters' intentions that went in? That is really what it is all about, whether your scrutineers are seeing evidence that the election outcome is right.

The Hon. Dr PETER PHELPS: But were not some of those fears put aside by, albeit quite a small number—only 1.7 per cent of those of the voters who sought validation? Is not the fact that even that very small self-sampling indicated that there was not a problem with initial vote and received vote?

Dr TEAGUE: I was listening to Mr Radcliffe and I heard two different answers to the same question. The first answer I heard was, "Actually, seven people tried to verify but failed" and then the second answer that I heard when the question was clarified was, "Actually, somewhere between 200 and 700 people tried to verify but failed."

The Hon. Dr PETER PHELPS: With respect to him, I think he said seven people clicked the button which claimed the vote was not as cast, of which subsequent investigation showed the two that they could identify through some sort of limited vote tracing said they had clicked the wrong button and 627 could not retrieve the information, which may well be, as they pointed out, a potential attack on the system which used a fake individual key.

Professor GORE: But it could also be that there were 600 people that were not able to verify their vote. They cannot rule that out.

Dr TEAGUE: Just to compute that as a failure rate, again acknowledging that not necessarily all such failures indicate that a vote was manipulated, let us just count the rate of failure, because it is true that we do not necessarily know what caused those failures. I say somewhere between 200 and 627 divided by about 5,000 is in the ballpark of about 10 per cent. We do not necessarily know why those failures occurred; it might just be that people did not write down the receipt number right or it might be that someone exploited the attack that was identified, compromised their browser and manipulated their receipt number, or it might be all kinds of other reasons. It might be that votes were dropped off the verification service but left on the core voting system database. It might be that 20 per cent of the votes were dropped off the core voting system database but only 10 per cent were dropped off the verification service.

We do not really know what caused those errors but we learnt for the first time today that the raw verification failure rate was 10 per cent. We could certainly argue about whether that is an overestimate or an underestimate or an accurate estimate or not of the number of iVotes that were dropped or changed, but the fact is that is, in fact, the only indication we have of the failure rate of iVote and that indication is 10 per cent. The thing that concerns me most about that is that at the time both the software vendor and the Electoral Commission consistently gave the impression that there had not been a problem and that the Electoral Commission's response to our disclosure of the security issues included a very clear statement that said 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.

Now that is not true, according to either the strict interpretation of those who logged in successfully, retrieved something and then keyed in the number that said there was an anomaly, nor in the much more relevant sense of those who called in and tried to verify but could not retrieve anything at all. So it seems to me that there was an indication of some kind of a problem affecting about 10 per cent of the verification attempts. It seems to me that there was never an opportunity for the scrutineers to find out about it, for the candidates to dispute it if they wanted, for the Court of Disputed Returns to investigate the causes of that error and the implications for the integrity of the election result. That, to me, in itself, suggests that the system was not verifiable and was therefore not the right way to run that many votes in a State election.

Professor GORE: Another point is that some election results relied on a margin of 300 votes.

Dr TEAGUE: Three thousand in the Legislative Council.

Professor GORE: But if it was 10 per cent, if all of those votes went wrong, it was enough to swing the election. So the votes that they cannot account for are enough to have swung the election.

Dr TEAGUE: To have swung the Legislative Council.

PROFESSOR GORE: Would you say that both the Electoral Commission and Scytl have put a lot of reliance on the fact that the verification server existed and it served a useful purpose in terms of security and probity? Is that the impression you have got? Is that fair, because that is the impression I have got. Immediately when you asked Mr Radcliffe about concerns he said, "That is why we had the verification server. It allowed people to ring back and of that only 1.7 per cent", blah, blah, blah. Everything was fine and nobody complained that things were going wrong. What we would like to argue is why this verification service is a dumb idea. First and foremost it completely destroys the idea of a secret ballot. It allows a coercer to sit beside the person who is voting, tell them how to vote and ring the service to make sure they voted that way. Australia invented the secret ballot.

The Hon. ROBERT BORSAK: How many people were aware that they could have their vote confirmed?

PROFESSOR GORE: The verification server should not exist. It is a bad idea. It compromises the privacy of your vote. The whole idea of why you walk into a polling booth is so if someone is coercing you you can say to that person, "Yes, I voted the way you wanted me to, absolutely. Give me my \$10" or "release my child", but you can vote however you wanted. With a server you cannot. The Electoral Commission is supposed to be looking after the secret ballot, but it is not. The ballot is no longer secret as soon as you have a verification server. The reason why they have the verification server is to give people confidence about the viability of this electronic voting.

The Hon. Dr PETER PHELPS: You put the Electoral Commission in a catch 22 situation of saying we demand verification of the ballot as entered but any verification will necessarily compromise the integrity of the privacy of the ballot. Is that not a catch 22 for them?

PROFESSOR GORE: No.

Dr TEAGUE: Over the internet it is.

PROFESSOR GORE: That is the point. The vVote system that was trialled in Victoria avoids that problem.

Dr TEAGUE: But only by voting at a polling place.

The Hon. Dr PETER PHELPS: Your argument is, it is not electronics per se, it is the internet component of electronic voting which is the element that provides you with concern?

PROFESSOR GORE: Right. Anything you do to try and build trust in the fact that the internet voting was not hacked has to give up the privacy of the vote or it has to give up the identity of the voter. In fact, the verification server does both.

Dr TEAGUE: Yes.

PROFESSOR GORE: In order to get your vote back you have to type in your secret number, which is tied to your identity. If the Electoral Commission wanted to they would know the names of everybody that verified their vote. Moreover, as you heard, the reason why they could not find those seven people is because they have their hands tied by privacy legislation.

Dr TEAGUE: They found two of them.

PROFESSOR GORE: What is the point of the verification server?

The Hon. Dr PETER PHELPS: Presumably to give confidence to the person who has voted that the vote lodged is identically the same vote which has been received.

PROFESSOR GORE: In order to do that you have to give up the privacy of your vote.

Mr ADAM CROUCH: Is that not their choice?

PROFESSOR GORE: No.

Mr ADAM CROUCH: If the voter does not want to check they do not have to.

PROFESSOR GORE: It is illegal for you to publicise or sell your vote.

Mr ADAM CROUCH: The voter makes a choice to verify their vote, not the Electoral Commission. We put that system in place to make the voter more comfortable, not to make the Electoral Commission feel more comfortable.

PROFESSOR GORE: Look at what happens at the moment. Why does the voter feel comfortable with paper based ballots? Because the parties and individual candidates can have scrutineers watching the vote counting process.

Dr TEAGUE: Can I slow down and say two things about the verification process. Giving an individual voter confidence is part of it but in some ways what you want to know at the end of the election is not that your vote was properly received and tallied, it is that the election outcome was right. I do not necessarily care about my vote in particular. My vote is unlikely to swing it one way or another. I care about the failure rate of the system overall and the capacity for manipulation overall of enough votes to swing the outcome. The idea of a verification mechanism in the situation where a valid verification mechanism is in place, for example, with an audit of the paper record in a polling place, is to give scrutineers and the wider public evidence that the failure rate of the whole system is low enough that it could not have changed the answer in the election. What we have here are 4,000 or 5,000 people who called in and tried to verify and somewhere between 200 and 627 people who called in and could not retrieve anything at all.

That is not just 200 to 600 people who called in and could not retrieve anything at all, that is the only indication we have of a total failure rate. The total failure rate says something like 10 per cent out of 280,000, which is a rough indication of some kind of a problem effecting roughly 30,000 votes.

As to the privacy and whether it is the voter's choice whether they call up and verify, it is important to realise that the verification service had all of the information linking the iVote identification [ID] to the personal vote and enough information to decrypt that vote without the voter having to call in and verify. That information is sitting there. It is sitting there encrypted but it is encrypted with a key that is held on the verification server. If there is another opportunity from somewhere within the commission to link that ID with that person, as long as that information can be linked, then the ID and vote are sitting linked regardless of whether the person calls in and tries to verify or not.

The Hon. Dr PETER PHELPS: The Electoral Commission would no doubt say that you are comparing apples with oranges in the sense that it is not the integrity of the iVote and a walk up vote which you should be you comparing, you should compare the integrity of a postal vote and an iVote whose jobs essentially replicate each other. The argument about coercion could be applied to a standard postal ballot and they would say that the iVote system has a greater degree of integrity because you cannot verify a postal ballot but you can verify an iVote.

Dr TEAGUE: Two good questions, one about coercion and one about verified voting. I agree in the first place that postal voting is susceptible to many kinds of fraud and privacy problems. I think there should be less postal voting. However, there is a big difference in scale. That is one thing that irked me about Scytal's submission. There is a big difference in scale between what one person can achieve by exposing or manipulating postal ballots, which is possible, versus what one person could achieve by automating a process in an electronic setting. In some ways the attack is the same, but on the other hand the scale of what one person could manage possibly without detection is completely different in an electronic system.

Number one was coercion. It is certainly true in both systems that you can lean over somebody's shoulder while they are voting. The difference between iVote and the post, and the reason iVote is worse than the post, is that the verification mechanism allows you to call in after they have voted and find out how they voted. The publication of receipts made after the election allows you to check whether or not they have revoted.

It is possible to coerce people in the postal voting setting but it is easy to coerce people after the fact as well in the iVote setting and it is easy to automate that process. You do not have to be near them, you just have to call them up and ask for their log in details.

The second question was verification and the opportunity for manipulation. On the one hand you are right, you do not necessarily get evidence that your vote went properly into the count if you did a postal vote. I agree that is not a great part of postal voting, which is why I do not think postal voting is a good idea. At least the scrutineers get to watch the receiving of the postal ballots and they can see that they are properly dealt with once they arrive at the Electoral Commission. That process at least has some kind of scrutiny and some kind of opportunity for observers to check that it is running okay.

Professor GORE: The reason why postal voting is better than iVoting can be summed as follows: kidnapping postmen, stuffing ballot boxes or stealing them leaves a trail. Hacking iVote may not.

The Hon. Dr PETER PHELPS: I have one final question as I do not want to monopolise the time. We heard that the alleged threat based on the compromised Piwik was conditional upon a geographically proximate breach of the system. Are you contending that that evidence is not true?

Dr TEAGUE: Correct. That is abject nonsense. I heard about that from Raj.

The Hon. Dr PETER PHELPS: Is there a way that you can explain it in non-technical terms if your contention is that that is not true.

Dr TEAGUE: Yes. What we are talking about is this: you are voting on your own device. You are connecting to the Electoral Commission's server through the TLS protocol, which is the protocol that is supposed to secure internet traffic. So you are downloading all kinds of stuff like the pictures, the frames and instructions about how to make the ballot appear in your web browser and so forth. You are also downloading a whole lot of code that is going to encrypt your ballot and give you the opportunity to check it and tell you what your receipt number is and so on.

Among the stuff that you are downloading securely from the Electoral Commission is also an instruction to go and fetch some other code from a third party service, so your web browser now goes and fetches some code from the Piwik analytic service. That was the connection that was insecure. It turns out that the Piwik analytic service did not configure their server in a secure way and that was the connection that it was possible to intercept. Once an attacker has been able to send whatever javascript they like into a person's web browser, then all this other fancy cryptography for encrypting the vote or whatever, is completely pointless because you are encrypting the vote that the attacker chose instead of the one that the voter chose.

So the question is: How easy is it for an internet-based attacker to intercept, not the connection to the Electoral Commission but that connection out to the side to the Piwik service? The answer is: It depends who the attacker is. For example, anybody with administrator privileges on the Piwik server itself would be immediately able to perform this attack on every single vote. Without needing to hack anywhere, break into anything or do anything clever, if you are the systems administrator on that service, you write whatever attack script you like into anybody's voting session.

Similarly, if you happen to be the systems administrator on the person's voting computer—same thing—if you control either endpoint, you do not even need to do anything clever to break into that connection.

Now there is the question of how hard would it be in an automated way to get into a larger number of points that intercept that communication? Again, it depends who you are and where you are. If you run a router for a large internet service provider in Australia, you are probably going to see a lot of those connections. You are going to be in the middle on a lot of those connections.

If you run the internet up-link provider for the Piwik server you are going to be in the middle of all of those internet connections. If you have already set up a botnet that has infected a large number of routers throughout Australia, London or some other place where lots of expatriate Australians hang out, then again you have the opportunity to be in the middle of any connection that goes through a router that you have already compromised. During the period when I was thinking about this I scanned the web looking for examples of large-scale compromises of routers and there are lots.

Bad stuff happens on the internet all the time. The two examples that I came up with in the afternoon that I was looking were, first of all—this is from May of 2015—is an examination of some malware called the moose malware. This was a worm whose main distinguishing feature was that it had clever code for automatically infecting other Wi-Fi routers. Once one router on a network was infected, the malware had all kinds of clever code for finding out where the other nearby routers were and infecting them as well. I chose this

for the entertaining graph—this is the graph. It is actually very hard with this, as with many other security issues on the internet, to measure and to understand how widespread it is.

The security researchers who wrote this paper tried to guess how prevalent it had been over the last few months just by looking at the kind of traffic that they thought might probably be associated with this thing in particular and I chose this one because it had this magnificent spike in March of 2015—you probably cannot see it but it does. The point is not that this particular malware was configured to break into iVote; the point is that this kind of thing happens on the internet all the time and if you had happened to be the person who happened to have already set up this worm that infected—

Professor GORE: Or bought the services for \$100.

Dr TEAGUE: Or bought the service. And that is the other thing: these things operate on a fee-for-service basis sometimes. If you decided to pay the person who had already set up the malware that infected this large number of routers in March of 2015, then it is already sitting there able to be enhanced to perform exactly the kind of attack that we are describing.

The Hon. Dr PETER PHELPS: But even if Piwik had been compromised and compromised maliciously, how would that have had a material effect on the actual iVoting system which has a verification process at the end, unless you are saying that it creates a false patina so that you simply get back verified what you have put in whereas really the receiving server has a completely different set of numbers?

Dr TEAGUE: That is exactly what I am saying.

The Hon. Dr PETER PHELPS: But is there any evidence?

Professor GORE: But that is the point. It should not be that you need evidence that the election is being rigged. What you need is evidence that it has not been rigged.

Dr TEAGUE: Right, exactly.

Professor GORE: Which is what we get by paper-based voting. Every candidate can have their scrutineer looking over the shoulders of the counter saying, "No, no, no, that is not a vote for Raj. That's a vote for Vanessa." You asked how many people tried and failed; 600 people tried and failed. That does not give you any guarantee about the 30,000 votes that were cast. Even of the 600, they were able to trace two. They know that two people voted correctly. You should be worried.

The Hon. COURTNEY HOUSSOS: I have two questions. Last week you told us that one of your concerns with the system was the lockdown of the system that was supposed to have occurred two weeks beforehand but then the PricewaterhouseCoopers [PWC] audit found that the lockdown was removed the day before the election. We asked ScytI about this and they said it was simply to add an index to the database, which did not actually change the standard database. Does that answer your question?

Dr TEAGUE: So again think about evidence and who you are trusting. It is entirely possible that what he said was true but you are now trusting a private software company with an absolutely critical part of the election infrastructure. Sure, maybe his software is totally correct; maybe it was completely free of bugs. Maybe as they lifted the lockdown nobody else took the opportunity to break in at the same time. Maybe it was fine, but you do not have any evidence that it was fine.

Professor GORE: Maybe he made a mistake. He thinks he updated the index. How do you know he did not do something else by accident? He is a person. They make mistakes and they had no chance to test the system again afterwards. All this quality assurance they talked about which was put in place two days before? Where is the quality assurance? "But Governor, I just changed the index." That's how the heartbleed bug was put in to open the SSL system. There was a serious computer programmer who said, "Oh, look, it doesn't have to be that complicated. I can do it this way" and he made a mistake.

Alex Halderman was able to take control of the Washington DC election because the computer programmer used double quotes rather than single quotes. There was one line in the millions of lines of code there where the computer programmer used double quotes instead of single quotes around something and double quotes meant one thing and single quotes meant something else. Using that one mistake they were able to take over the voting centre. They were able to control the cameras that were looking at the operators typing in the password. They knew what the password was because they could see what the operators were typing. They were able to change every vote and leave the system without any trail. However, when voters completed their vote, they played the University of Michigan fight song. The only reason these people knew that something was wrong was because one person rang them and said, "Look, your voting system is great, but why does it play the

University of Michigan fight song at the end?" They all got the sack. The internet is a dangerous place, as the Australian Bureau of Statistics just found out. I have a bunch of dot points that I would like to address.

The Hon. COURTNEY HOUSSOS: I specifically asked the Electoral Commission about the scrutiny of the process. Obviously, we will get more information and that is fine. From your knowledge at the moment, if someone like yourselves with a similar level of knowledge were appointed as an independent scrutineer by Electoral Commission or by a party as a party scrutineer, do you think that would address your concerns about the outsourcing of the scrutiny process that has been outsourced to PwC?

Dr TEAGUE: The short answer is no, because the verification protocol is not complete. It simply does not let you check enough evidence, in this case that the right votes went into the right place. One report said that the independent experts were checking that the core voting system votes matched the votes coming in from the verification service, and a different report said someone was checking that those votes in turn went properly into the count. That is a crucial difference. Mr Radcliffe said today, "We publish all the data anyway." That is true; they do. However, who checked that the data they published matched those two sets of data that were reconciled on the day of the count? There is this crucial gap there. This whole argument relies on some supposed experts who have not even been named let alone produced a report or been asked to appear or turn up to attest to this being okay. There was something that was checked, but that something does not seem to me to be any kind of complete opportunity to check that the votes that went in at the voters' end accurately matched the votes eventually published.

Professor GORE: I would like to read something I found on the web. This is about us acting as scrutineers for the code. It states:

The Obfuscated V Contest

In October 2004, inspired by the Obfuscated C code contest and the electronic voting debate, Daniel Horn proposed and ran the Obfuscated Voting Contest. The aim of the contest was to produce a vote counter written in C which appeared correct but did the wrong thing when counting votes...

The winner of the "date" division was the program which appeared most correct on inspection and produced the correct result before the election but an incorrect result on the day of the election...

The following is a modified version of ... program which is much stealthier. On Election Day, it skews the votes by "delivering" all votes cast for a few hours to a particular candidate.

This is open source code being looked at by academics and serious programmers. The rules are that there is something wrong with this code, find it. They could not. Engaging academics like us has some limited advantages, but no guarantee.

Dr TEAGUE: It is better than nothing.

Professor GORE: I agree.

Dr TEAGUE: For the record, I want to address the answer to an earlier question about how the bug in the counting code was discovered. The answer given was not accurate. We were not in any way engaged to analyse that code. The people who certified the code did not find the bug. They certified the code and we re-implemented the code out of our own curiosity.

The Hon. Dr PETER PHELPS: This is the vote counting code.

Dr TEAGUE: Yes.

Professor GORE: On that point regarding academics from Sydney University and Macquarie University helping the Electoral Commission, we know that some of our academic colleagues were initially asked to sign clauses saying they would not say anything until after the period for disputing the outcome in the Court of Disputed Returns had expired. The clauses may have been removed, but they were there initially. When I met one of these academics at the international e-voting conference, he said he could not tell me what he was doing for the Electoral Commission. When I offered to help the New South Wales Electoral Commission, they asked me to sign a non-disclosure agreement. I refused, which is why I am not one of those academics. Also, the academics they engaged did not find the bug in the vote-counting program, as we did. You need to engage academics who are sceptics, not academics who are your pets.

Dr TEAGUE: Which we are not, in case you have not noticed.

The Hon. Dr PETER PHELPS: That was subtly conveyed.

The CHAIR: It could have come up once or twice today.

Professor GORE: It is the good thing about not being a bureaucrat. I will talk about the dangers of making source code open source. If you remember, Scytl said that they did not want to put their source code online and make it visible because of security concerns. This is what Wikipedia says:

In security engineering, **security through obscurity** (or **security by obscurity**) is the reliance on the secrecy of the design or implementation as the main method of providing security for a system or component of a system. A system or component relying on obscurity may have theoretical or actual security vulnerabilities, but its owners or designers believe that if the flaws are not known, that will be sufficient to prevent a successful attack. Security experts have rejected this view as far back as 1851, and advise that obscurity should never be the only security mechanism.

That is why we say your code should be available. Hiding it does not really protect you.

The Hon. Dr PETER PHELPS: What about their argument that the publication of code will allow malefactors to identify vulnerabilities but not report , and in fact will allow malefactors to then exploit those vulnerabilities because they want to do the wrong thing?

Professor GORE: That is the point. That is what the quote says: security through obscurity is nonsense. That is exactly the point.

The Hon. Dr PETER PHELPS: No, what I am saying is that—

Professor GORE: But that is the defence. The reason you should keep your code obscure is that if you publish it then bad guys will find the bugs in it and exploit it.

The Hon. Dr PETER PHELPS: Yes.

Professor GORE: They will anyway.

The Hon. Dr PETER PHELPS: That is the question. You say that they will anyway, but how will they get access to the code? Is there a threshold where you would have to get access to the code which is not required to be met when you have public disclosure of the code?

Professor GORE: Alex Halderman did not need access to the code to break the Washington DC system.

The Hon. BEN FRANKLIN: Do you contend that although it is more likely by publishing it that the bad guys will be able to break in, on the flip side it is much more likely that the good guys will find the problems first and alert people to them? So, yes, there is a down side but the up side is more significant. Is that fair to say?

Professor GORE: Especially if you engage the sceptic academics and do not get them to sign non-disclosure agreements. I have written down some other points. There was a contention, I think from the professor from the University of Sydney, that India and Brazil have already adopted electronic voting on the grounds that it saves money. We are part of the electronic academic community and we have found that there is a tendency for developing nations to adopt electronic voting. That is because they assume that the electoral commission is corrupt. So they trust any form of voting which they believe takes these corrupt people out of the loop—that is, electronic voting is more secure than paper based systems since you need a sophisticated attack rather than just bribing the electoral commissioner. That is why India and Brazil are going there. The following jurisdictions around the world have tried electronic voting and have abandoned it: Ireland, Holland, Norway and Washington DC. They are all modern Western democracies.

Mr ADAM CROUCH: You mentioned before that you had spoken to the Electoral Commission and that you had refused to sign the non-disclosure form. Why? If you were one of the good guys, respectfully, would you not want to say, "I want to get inside the tent. I am one of the good guys. I want to look at where potential problems are going to come from." Signing this form means you cannot run off to the media and say, "I have found a problem." Why, as one of the good guys, would you not sign the form, be inside the circle, and say, "We have found a problem"?

Professor GORE: It was about the three-month period for disputed returns. They basically wanted us to keep quiet until the affected candidate could not challenge. That is exactly what has happened with the recent bug that we found. When the bug was published, the Electoral Commission said, "Rina Mercuri can't challenge because it is more than three months after the election".

Mr ADAM CROUCH: Could you not potentially have found the bug or the threat prior to the election? Regardless of what happens after the election, the idea behind you being inside the tent prior to the election is that you could try to find the problem beforehand. I am just surmising here, but their concern would be that, were you inside the tent, you would have access to a lot of information—and they would not want you

to jeopardise the public's confidence in the system. Why not take the opportunity to go inside the tent before the election and try to stop the problems from happening?

Professor GORE: The same thing happened with the ACT Electoral Commissioner. He put a vote-counting software up on the web. We found three bugs in it. Each time we did, the first thing we did was tell him so that he could acknowledge it and then fix it. Being inside the tent or being outside the tent is not relevant. We are academics; we have a public duty.

Dr TEAGUE: I agree. Can I add my 2c worth—because I agree completely? Here is the disaster scenario that I never want to have happen to me. Suppose I had been there. Suppose I had been inside the tent and I had signed the NDA—which promises that I will not disclose anything until after the expiry of the Court of Disputed Returns period. Suppose I learn, during my time inside the tent, that 10 per cent of the people who call in and try to verify their vote have failed to retrieve anything at all. Now what do I do? I see someone come to the Court of Disputed Returns over a 3,000-vote margin—whether this particular person is a ratbag or not is not the point. I know there has been an issue that indicates there is a problem with the verification of about 10 per cent of 280,000 votes. I have signed something that says I am not going to disclose anything until after the period for disputing has expired. I see the Court of Disputed Returns doing their thing, discussing what might have happened. I know there are relevant questions. I know that I should be telling them to ask, 'What was the distribution of these verification failures? Were these verification failures more likely to have happened for votes that were cast while the system was known to be secure?' I know these things—

Mr ADAM CROUCH: I am sorry to interrupt, but you are assuming that the Electoral Commission—which all of us here today have said we hold in the highest regard—would want to cover up such an issue, would want to cover up a problem. While it would be a rod for their back, if you found that error before the three months was up, would you not think that the Electoral Commission would do everything to remedy that problem, not cover it up? All of us here today have said we hold them in the highest regard. You are saying that your nightmare scenario is that you know about the problem, you cannot talk about the problem and, what is more, the Electoral Commission is going to ignore the problem for three months—not try to address it. When that three months was over, would you not then have the evidence to completely dismantle the whole system—because confidence in it would be shot?

Dr TEAGUE: But you did not hear about this problem until today.

Mr ADAM CROUCH: You were not inside the tent, so you have been able to talk about it whenever. You were not inside the tent at the Electoral Commission. Everyone runs around saying that there are good guys—and we know there are plenty of bad guys; you yourself said that the internet is a bad place. What we are saying is that we are assuming that, if we make the source code available in a bad place, there are not more people wanting to do bad things than good things. For starters, I put it to you that there are more people wanting to do bad things than good things.

Dr TEAGUE: Sure.

Mr ADAM CROUCH: Would it not be that you guys, as the good guys, should be there in advance, helping to protect the system to ensure its continuation and its credibility?

Dr TEAGUE: I would be absolutely delighted to be there in advance, helping to protect the system. I did my best to explain to the Electoral Commission what the flaws in their proposed protocol were two years before they even ran it. I would be absolutely delighted to look at anything that is up there. I am keen to find bugs and tell them about it. My colleagues—Andrew Conway, Professor Gore and Alex Halderman—and I have done more to find more bugs and fix more problems in election software in Australia than anybody who is inside the tent. The only thing I am not willing to do is promise not to tell the Court of Disputed Returns or the candidates or the scrutineers about them.

Professor GORE: And you saw how Dr Teague got treated when she did disclose. 'Was it shoot the messenger?'—that was the question that you asked?

Dr TEAGUE: Yes.

The CHAIR: We might move on from that particular line of questioning. If there are no other questions from the committee, we will give you guys the opportunity to wrap up.

Professor GORE: I have a lot of things written down because a lot of things have been addressed. I would just like to touch on them. Someone—I think the ScytI person—mentioned that electronic voting was being used by Norway. This is from a press release published in 2014:

The Ministry of Local Government and Modernisation has decided to discontinue further internet voting pilot projects. Such pilots were carried out during the parliamentary elections in 2011 and 2013.

... ..

This shows how important it is that elections are conducted at polling stations where election officials make sure that the principle of free and fair elections and the secrecy of the vote is respected.

That is their report. It is a parliamentary report.

The next issue I have is the security of iVote. The Electoral Commissioner said something like this—it may not be exact: "The EC is working on increasing the security of the iVote system." How will they know when to stop? How will they know whether it is safe to roll it out for the next election?

Sampling was an important point. Removing sampling is absolutely essential—full stop.

Dr TEAGUE: For the count.

Professor GORE: Yes, for the count—absolutely essential. But it does not remove the danger of bugs. The ACT does not use sampling and their vote-counting software contains three bugs. The problem is with the complexity of STV counting—any form of it.

Dr TEAGUE: For the record, the bug that we did find in the New South Wales system actually had nothing to do with the randomisation. It made it harder to find, but it was actually just a bug in the computation of the last parcel.

Professor GORE: Another issue I have written down is that of the existing counting software. The Electoral Commission has said that it was created by, I think, CGI or various other companies. How do you know that the software does not contain bugs? How do you know that it does what it is supposed to? As we have shown, you can test it all you like. Even if you put it up for scrutiny, it can contain bugs that people will not find. More importantly, we found one bug in that software—how do you know that it does not contain others? We found the bug without even looking at the software. We found the bug just by writing our own independent version and testing the data that they had published. How do you know there aren't other bugs?

I have written down "a high percentage of satisfaction and confidence". Would it be the same if all the facts were known? That is what the Electoral Commissioner said when they sampled voters and got a high satisfaction rating. What would the result have been if you had told the voters beforehand that there were people fiddling with the software one day before the election, that the number of people who tried but failed to verify their vote was large enough to swing the election result, and that academics had found serious bugs in existing software that had been used in electronic collections? What sort of confidence would the average voter have if all of this were public?

If you look at the iVote website it says something like:

iVote is extremely safe and secure. Your online voting process is fully encrypted and safeguarded. Ongoing risk assessment and threat analysis is intrinsic.

Then why does the Electoral Commission want to work on improving the security?

Dr TEAGUE: Everybody is really tired, I know, but I just have two minutes more of things to say.

The CHAIR: Absolutely. Feel free.

Dr TEAGUE: I want to return right back to the first thing we started thinking about last week. We outsourced the conduct of the election to a private company. We outsourced the scrutiny to PwC. We want to ask about what the opportunities were for your scrutineers and the voters and the public to really understand what would happen. You asked me what my concerns were about what we had heard today. The main thing that concerns me about what we have heard today and over the last couple of weeks is that we have heard stuff that was new. We have heard new facts from the time the PwC report was published a couple of weeks ago—

Professor GORE: One year after the election.

Dr TEAGUE: —more than a year after the election.

Professor GORE: Past the end of the challenge period.

Dr TEAGUE: Past the end of the time it could be challenged. We heard for the first time from Mr Radcliffe today that roughly 10 per cent of people who called in and tried to verify actually failed. Scytal have sold a lot of other software in Australia during that time. They have sold software to the Queensland Government. They have done a pretty good job of persuading the Victorian Government to switch over to internet voting. They have sold a Senate counting solution to the Australian Electoral Commission. Did those customers fully understand that there had been a 10 per cent verification failure rate in iVote? Because the Senate count in particular does not strike me as an application with a tolerance for a 10 per cent failure rate. The

problem that I see is the combination of on the one hand the perfectly reasonable commercial incentive to make it look like the software is good and on the other hand the very unfortunate consequence of not having been fully and completely forthcoming about serious problems that did happen in the conduct of the State election.

The Hon. Dr PETER PHELPS: And on that happy note—

The CHAIR: If there are no other questions, thank you very much for attending today for the second week in a row, which is very commendable. If we have further questions, and I suspect we will, are you happy to receive those and respond over the next couple of weeks?

Professor GORE: Yes.

The CHAIR: Thank you very much.

(The witnesses withdrew)

(The Committee adjourned at 5.07 p.m.)