

REPORT ON PROCEEDINGS BEFORE

**JOINT STANDING COMMITTEE ON ELECTORAL
MATTERS**

**ADMINISTRATION OF THE 2023 NSW STATE ELECTION AND
OTHER MATTERS**

At Macquarie Room, Parliament House, Sydney, on Friday 17 May 2024

The Committee met at 9:30.

PRESENT

The Hon. Peter Primrose (Chair)

Legislative Council

The Hon. Robert Borsak (Deputy Chair)
Ms Cate Faehrmann
The Hon. Sam Farraway
The Hon. Chris Rath

Legislative Assembly

Mr Stephen Bali
Mr Nathan Hagarty
Mr Tim James

PRESENT VIA VIDEOCONFERENCE

The Hon. Bob Nanva

Mrs Sally Quinnell
Ms Janelle Saffin

The CHAIR: Welcome to the second hearing of the Joint Standing Committee on Electoral Matters inquiry into the administration of the 2023 New South Wales State election. I acknowledge the Gadigal people of the Eora nation, who are the traditional custodians of the land we are meeting on here at Parliament. I pay my respects to Elders, past and present, and extend that respect to other Aboriginal and Torres Strait Islander people who are present or watching proceedings online. I thank the witnesses who are appearing before us today and the stakeholders who have made written submissions. The Committee appreciates your input into this inquiry. Please note that the Committee staff will be taking photos and videos during the hearing. The photos and videos may be used on the Legislative Assembly social media pages. Please let the Committee staff know if you object to having photos and videos taken.

The Hon. JOHN HATZISTERGOS, AM, Chief Commissioner, NSW Independent Commission Against Corruption, sworn and examined

The CHAIR: I welcome the Hon. John Hatzistergos, AM. Thank you for appearing before the Committee today to give evidence. Before we start, do you have any questions about the hearing process?

JOHN HATZISTERGOS: No.

The CHAIR: Would you like to make a short opening statement before we begin the questions?

JOHN HATZISTERGOS: Yes. Thank you, Mr Chairman, and members of the Committee. As noted in our submission, political donations have featured in a number of the commission's investigations, as have property developers—most recently in our Operation Tolosa report, which involved an investigation into the mayor of Canada Bay council. That report outlined that there were political donations received from a number of individuals who had an interest in development matters before the council. The donations were permissible because they were made as part of the 2016 Federal election, where the mayor was a candidate. Despite that, our report found that the donations were capable of giving rise to a conflict of interest. This highlights the problem that was raised in our Operation Aero report: The differences in election funding laws in New South Wales and the Commonwealth mean that donations that are prohibited in this State can be made lawfully into a Federal election account.

I understand the Commonwealth Government has shown some interest in reform in this area. We welcome the Committee's interest in important matters of public integrity and, as noted, we support the existing prohibition on political donations from property developers. However, for the reasons expressed in our submission, we think that there may be some legal and practical barriers to extending the ban to others with connection to the property industry.

Mr TIM JAMES: On that point, I note that there are some in the Parliament and in our community who would, and who do, assert that real estate agents ought to be prohibited donors as well. I want to be clear: That's not the position of ICAC and you are content with the present definitions and arrangements as they stand today?

JOHN HATZISTERGOS: There's been a number of attempts to limit political donations. Some have been successful; some have not. Our concern is the underlying issue, which is one of conflict of interest. We say that that's the way we should address the matter rather than developing a long list of persons who may or may not survive a High Court challenge.

Mr TIM JAMES: Yes, I would agree with that. That takes me to my next point, which is on the conflict of interest regime for parliamentarians. On page 5 of your submission you refer to the ICAC noting that the arrangements here in New South Wales could be further improved, and I think there have been steps and measures taken since then. Can we just get a sense of the commission's view on the current conflict of interest regime for parliamentarians in New South Wales?

JOHN HATZISTERGOS: There's a draft regulation that's been put before a committee which is looking at the recommendations that we put forward in Operation Keppel, which will require a greater level of disclosure of some of the matters that have been revealed in our previous inquiries. Fundamentally, the question of a conflict of interest is an objective test. It's not a subjective test. What that means is what a reasonable person would see. You can't rely on simply the moral obtuseness of people saying, "I don't have a conflict of interest. I can deal with this matter."

The three indicia that we've outlined in our Keppel report as indicative of a conflict of interest is the nature, the intensity and the duration of the relationship. One of the fortunate things in New South Wales is that the cap on donations makes it less likely that that would give rise to a conflict of interest, but one circumstance which we've identified in recent times where a conflict of interest did arise was in the Tolosa case. Tolosa was a

case where there was a Labor member of the Canada Bay council—he was the mayor—who resigned from the council in order to contest the Federal seat of Reid. He received developer donations towards the Federal campaign, which were perfectly lawful because developers are not prohibited. He then, having failed to win the election, went back to Canada Bay council and duly voted for matters which the donors had an interest in.

One of the matters that we raised in our submission is that the model code for local government does actually provide a level of prescription about conflicts of interest, which the current code in New South Wales does not—when you can have a significant conflict of interest which requires recusal, effectively, or one that simply requires identification of the particular conflict.

Mr TIM JAMES: My particular concern relates to third-party campaigners—I give the example of Climate 200—who would and do operate under Federal laws and yet are now players in State election campaigns. That was the subject of a supplementary question I asked of Mr Holmes à Court. I'm aware that the political parties—and I can speak from personal experience—have very specific, dedicated arrangements to ensure that there's a Federal set of donations subject to Federal laws and there's a State set of donations subject to State laws. I'm not so convinced that that exists in third-party organisations like Climate 200 and it is a point that you've raised. I invite your comment on the extent to which third-party campaigners are compliant with the distinctions between State and Federal laws.

JOHN HATZISTERGOS: I'm not sure that they are regulated in that particular way. I have to say that I'm not—

Mr TIM JAMES: I agree.

JOHN HATZISTERGOS: Can I just go back a little bit? There seems to be a preface to your question that expresses that you are happy with the relationship that political parties have in terms of State and Federal account keeping: Basically you can accept all the constraints on donating to a State campaign and you can have a separate campaign fund for a Federal campaign, and everything is well. We know that's not the case.

Mr TIM JAMES: I just know from personal experience that—

JOHN HATZISTERGOS: Well, your experience—

Mr TIM JAMES: —the Liberal Party is very tightly managed.

JOHN HATZISTERGOS: I am pleased to hear that but, can I just say, in Operation Spicer the commission did an investigation in relation to the Liberal Party—I know it was some time ago—in which it identified how donations were, effectively, funnelled through a third-party organisation, and they were prohibited donations, and then used. The commission then put out in 2014 a publication—there were legislative reforms done, but we put out a publication. I have it here, actually: *Election Funding Expenditure and Disclosure in NSW, Strengthening Accountability and Transparency*. That was the document that went out and that coincided with the Schott review. Kerry Schott was tasked, together with John Watkins and Andrew Tink, to look at this issue. They picked up the commission's recommendation, which was that there should be accountability as a condition, basically, of the administrative fund amount that you get out of the—which is now in the millions, to political parties.

There should be a level of governance accountability for political parties to ensure that you don't have the situation which later arose in Operation Aero. I will come to that in a moment. Anyway, the Schott review recommended that there be some accountabilities for political parties in those arrangements for governance. What happened out of that was that the Schott review was sent off to your predecessors, the electoral matters committee, and the electoral matters committee came back with a recommendation saying that the Electoral Commission can just give guidance. There shouldn't be a condition put on the funding. We saw the success of that with Operation Aero, which was the Labor Party and \$100,000 which was a prohibited donation through the Chinese Friends of Labor organisation, with people basically using vehicles to circumvent the donation laws. Your predecessors were then asked—I think under Premier Perrottet—to once again look at this issue, and you didn't manage to report before the election.

Mr TIM JAMES: This Committee needs to deal with the recommendations from—

JOHN HATZISTERGOS: You need to confront this issue.

Mr TIM JAMES: Yes, agreed.

JOHN HATZISTERGOS: You need to actually confront this issue. This has been going on since 2014. I noticed when we were asking the Committee secretariat earlier on why this matter wasn't being dealt with, we got a response, but you didn't have time to deal with it or you needed some expert advice, I think. This is seven years.

Mr TIM JAMES: I hear you. I, for one, want to ensure that this Committee does its job to be wholly responsive to Operation Aero and those recommendations.

JOHN HATZISTERGOS: Just to be very clear on this—and I am not trying to have a go at people—we had evidence in Operation Aero from the former general secretary of the Labor Party, Sam Dastyari, who said he didn't see what the problem was in Operation Aero because, if you have a prohibited developer at the State level, you just put it into the Federal fund. If it is over the amount, you just put it into the Federal fund. That is not the way you administer laws like this. The whole thing just becomes an illusion.

Mr TIM JAMES: My concern is that this is and would be happening to an even greater extent within third-party campaign organisations such as Climate 200.

JOHN HATZISTERGOS: We hadn't examined the issue of third-party organisations, but I take your point.

Mr TIM JAMES: Given the sums of money, I suggest that ought to be done.

The Hon. ROBERT BORSAK: Thanks very much for coming today, Commissioner. I might ask you to talk around your section dealing with strengthening political parties' governance arrangements and the recommendations that administration funding should be contingent upon compliance with acceptable standards of governance, particularly in the area of what you are just talking about now: controlling donations. How would you actually attack that? What set of measures and tools could you give to the commissioner that would help them go through that process?

JOHN HATZISTERGOS: The very basic thing you can do is, if a person is a prohibited developer and comes to make a donation to a State fund and that is prohibited, you don't accept it, rather than tell them you can put it into the Federal fund. The second thing you can do is, if a person comes forward and wants to donate more than what the cap allows in the State, you don't say you can donate the balance into the Federal fund. One of the things that the Schott review recommended is that this issue be dealt with at COAG, because you've got different State and Federal arrangements. I understand that, particularly when it comes to developers, Federal people say that they don't deal with land use and they don't see a need to regulate the development industry or prohibit the development industry from donating to the Federal campaigns. But what does it achieve, ultimately, if a developer just comes along and donates to a Federal fund? It is all disclosed; we all know it is disclosed. Does that create a conflict of interest for members of a political party at the State level who have to deal with some applications that those people have put forward?

The Hon. ROBERT BORSAK: Yes, that is right. That is a typical workaround that we have seen too.

JOHN HATZISTERGOS: But workarounds are what we are seeing time and time again, Mr Borsak. We saw it in the Chinese Friends of Labor situation, Operation Aero, and we saw it in Operation Spicer.

Ms CATE FAEHRMANN: Just going on from that, clearly the legislative move to ban developer donations was a very good and significant one. I note that your evidence is that extending that further could be problematic, and the commission supports strengthening the focus of elected officials on their ethical obligations as opposed to extending prohibitions. It is nice in practice to say that but, to me, sometimes with big corporations you can put all of these nice guidelines in place—voluntarily obligations—but we know that the majority often don't move until there is a strong law in place, where there are strong penalties. My question is around strengthening ethical obligations both at the local government level, because I think that is where we are really seeing a lot of the potential for influence and corruption from the development industry playing out, but also for—I know you have submitted some stuff to the State Parliament, but if you could start with local government and what that looks like if there is no strengthening of the laws to widen the net to catch more prohibited donors in the development area.

JOHN HATZISTERGOS: I am not quite sure I understand the question.

Ms CATE FAEHRMANN: Your submission says you support strengthening the focus of elected officials in their ethical obligations around donations.

JOHN HATZISTERGOS: Yes.

Ms CATE FAEHRMANN: How is that going to work better than expanding the prohibited donors in the property industry?

JOHN HATZISTERGOS: We are not advocating for any wind-back of the current prohibitions in relation to developer donations.

Ms CATE FAEHRMANN: No, I am not saying that.

JOHN HATZISTERGOS: That has, I believe, made a difference in appropriate circumstances. What we are asking is to be careful about extending that prohibition to other areas. I think there were two attempts to ban or limit unions from donating, and they failed in the High Court. There is a risk with further expanding groups. In relation to the question of property donors, how far are you going to go? Our submission makes the point—are you going to ban solicitors and architects and a whole range of other people who may be involved in or get some sort of benefit out of the development industry? That is the concern we have. So we go back to the next point: How should we deal with it? Our submission outlines that.

In local government, the model code does provide a level of guidance to local councillors as to how they should exercise their functions, declaring something a significant or not significant pecuniary interest, and determining and managing that particular interest themselves. We are going to be doing some work in this space as well to help people to identify a conflict of interest and to give you more guidance in relation to those issues. But, fundamentally, the issue is whether a reasonable person would see that person's public obligation to be effectively impacted by the circumstances of the donation. Does that make sense?

Generally speaking, donations within the cap are lawful and they're acceptable. I am not unreal. I understand that politicians have to get elected and raise money in order to campaign. I get that entirely. What's not acceptable is what happened in the Cyrus investigation that we did where \$50,000, I think it might have been, was handed to a member of Parliament for the political party on the basis of him delivering an outcome for leaseholders in Circular Quay. That is unacceptable—the quid pro quo.

Mr STEPHEN BALI: Thank you for your submission, Mr Hatzistergos. It has been a while since we last caught up many decades ago. I just want to explore what you are talking about, which is putting the emphasis back onto the individual—quite rightly, as you suggest—to manage the conflict of interest. People provide a donation—and I know the examples you said there in relation to asking for specific things or beforehand for determination—but people aren't going to provide any donation to anyone that they don't really know et cetera.

JOHN HATZISTERGOS: Who they don't know?

Mr STEPHEN BALI: If they don't know a politician, then why would they? They usually see them in action, you talk to them at functions et cetera. How do you actually draw the line as far as a conflict of interest? Because if I am meeting with any non-prohibited donor and chatting to them about certain issues, or they're coming to the function, they see how well you operate and then they donate. At what point do you draw conflict of interest? Because, in the end, you need people to donate to a cause. You don't know that they are going to come to you later on and ask for a request for whatever they're lobbying for.

JOHN HATZISTERGOS: I don't necessarily see a donor as a conflict of interest, if that's your question. I don't think you can draw the conclusion that any person who donates to a campaign, irrespective of the amount, creates a conflict of interest. I think that would be unreal. And I'm certainly not suggesting that.

Mr STEPHEN BALI: One last thing is that just recently last year, we quite rightly banned clubs from donating because the Parliament is considering liquor laws, gambling laws and all sorts of other aspects. To extend that further to a director that's sitting on a board, who is generally—and talking about clubs, they're embedded into the community. To suddenly ban them from being able to even buy a raffle ticket or something, most of them—workers' clubs or RSL clubs et cetera, people associated. Do you think it's a legitimate extension to ban club directors? It is one thing banning the clubs, but directors who don't even get paid that much from their own clubs, generally, to sit on boards and suddenly can't donate or participate in the electoral process. Do you think that's something that—

JOHN HATZISTERGOS: I haven't seen any evidence which would justify an extension to that point. I mean, registered clubs, I understand. There was a concern about that industry and that precipitated the Government to commit to changing the legislation and it's achieved that. But we have to be careful about these matters because some attempts to ban have succeeded and some have not. You've got a very detailed paper, I think, amongst the submissions from Anne Twomey, which no doubt you will read. There are other papers as well which deal with this issue of just banning people.

I had some experience in 2010 or 2011 of the first attempt to ban developer donations. One of the members at the time wanted to ban the sex industry from donating. I'm not sure that they have the same capacity to influence members of Parliament as developers do, but my concern is that the lengthening of the list of proposed exclusions moves away from the fundamental reason why the developers were sought to be excluded as political donors to, basically, a group of people who you don't like or whose interest you find offensive. That's where I think you may strike some difficulty.

Mr NATHAN HAGARTY: Just back to the prohibition on property developers, you recommend not expanding that. But I wanted to get your thoughts on the current definition of a property developer in the

legislation. I get some feedback that the definition of property developer is very much in the "I know it when I see it" category, where there are people who get captured by the definition who people wouldn't regard as property developers, and others who are clearly property developers who don't get caught in the definition. Do you think that the current definition is appropriate or should that be looked at?

JOHN HATZISTERGOS: We've indicated in the submission that the definition doesn't extend to a whole range of other people who you might think might otherwise be encompassed. In particular, family members of property developers can donate. A spouse, or someone who isn't a property developer and not involved in the industry, could potentially donate. So it's not perfect. But there are limits to these things and I'm just cautious about having a longer and longer list of exclusions.

The Hon. BOB NANVA: I note the commission's view, and the view you've stated this morning, regarding the harmonisation of election finance laws including donation expenditure caps. But the risk is that harmonisation doesn't result in a weakening of the New South Wales scheme to meet those national standards. We have heard evidence previously from third parties who would clearly much rather see the New South Wales scheme mirror the current Commonwealth scheme with respect to donation and spending caps. Is the commission still supportive of the current New South Wales scheme with respect to donations and electoral expenditure?

JOHN HATZISTERGOS: There are no caps at the Federal level. It's something like \$16,000 before you even have to disclose a donation at the Commonwealth level. I understand there's some resistance, particularly amongst some of the Independent members, to caps being introduced—for obvious reasons. The amount of money that was spent at the last Federal election in some of the teal electorates was extraordinary. Do I prefer that scheme to the New South Wales scheme? No, I don't. I am much more supportive of the New South Wales scheme. Despite its shortcomings, and the issues that I have drawn attention to, I think it provides some additional protection of the public interest that I don't think is manifest in the arrangements which I have earlier described.

The Hon. BOB NANVA: I just have one other question on the issue of party governance. Registered political parties receive somewhere in the order of \$30 million in campaign funds and \$15 million in administrative funding. There's obviously a legitimate public expectation that, in return for those public funds, parties meet minimum standards of governance. Is the commission supportive of linking the provision of administrative funding to parties by the Electoral Commission to higher standards of party governance, more documented standards, more party auditing, but drawing a direct link between the provision of that admin funding to standards of governance?

JOHN HATZISTERGOS: I won't go into the detail of what it should include, but you can read it in our report, which is the 2014 report on election funding expenditure and disclosure. I do support a linking of it. That was, in fact, recommended by the commission. It was accepted by the Schott review and diluted somewhat by the electoral matters committee when it reviewed the Schott review, and it has not been addressed since. The direct linkage is important, but you run the risk, if you don't adhere to those standards, of missing out on the administrative fund payments. I think Ms Faehrmann asked me earlier about sanctions. That's one of the sanctions. If you fail to comply with the governance standards, you lose access to that pot of money. The content of the governance arrangements is also detailed in the Schott review. There are various statements which are made in there. I don't know that they were all addressed in this Committee's consideration, but there are detailed provisions in there about things such as auditing.

The CHAIR: We are just about out of time. Do you have one more quick point, Mr Nanva, that you wanted to raise?

The Hon. BOB NANVA: No, thank you.

The CHAIR: It is a shame, because I think we could continue this for quite a long time. Thank you very much, Mr Hatzistergos, for coming today and for your submission.

JOHN HATZISTERGOS: You're welcome. I'll leave you to your important work.

The CHAIR: You will be provided with a copy of the transcript of your evidence for corrections. Committee staff will also email any questions taken on notice—I don't think there were any today—and any supplementary questions from the Committee.

(The witness withdrew.)

Mr ANTONY GREEN, Election Analyst, affirmed and examined

The CHAIR: I welcome back our next witness for another appearance, Mr Antony Green. Thank you for appearing before the Committee today to give evidence. Please note that the committee staff will be taking photos and videos during the hearing. The photos and videos may be used on the Legislative Assembly's social media pages. Please let committee staff know if you object to having photos and videos taken. Before we start, do you have any questions about the hearing process?

ANTONY GREEN: No. I would like to just clarify at the start that I'm appearing as a private citizen. Of course, much of my views and my work overlap with my job at the ABC, but, as a general rule, I come along to these committees and offer advice from personal experience. The ABC does not always have a formal position on some of these issues that I raise.

The CHAIR: Much appreciated. Thank you. Would you like to make a short opening statement before I pass to questions?

ANTONY GREEN: Yes. I have made a quite limited submission, which is about the conduct of the count—and, in particular, to do with pre-poll voting. This has been a problem in every State and Territory in recent years. In the last Western Australian election, for instance, the count only got to 37 per cent on election night. Fortunately, the result was clear enough on 37 per cent at the last Western Australian election. In New South Wales, for instance, I think it was about 52 per cent at the end of the night, largely because of the lack of pre-poll voting being counted. There were a number of technical and legal reasons why the commission couldn't count more than that.

The commission, of course, is trying to deal with a problem which has been growing for many years, that between 1984 and 2003 the proportion of votes taken on election day declined from 88 per cent to 50.6 and the proportion of pre-poll votes rose from 1 per cent in 1984 to just under a third in 2023, and that was with an even shorter period of pre-poll voting introduced. As I've outlined in my submission, one of the difficulties is simply the sheer volume and size of the pre-poll voting centres. The average polling place takes 940 votes; the average pre-poll centre—early voting centre—took something like 4,300. Of course, to count those extra votes requires extra staff to be counting. The polling places are staffed to conduct the poll and to do the count. The early voting all has to be additional staff, and there is great difficulty getting staff at the relatively low salaries on a Saturday night when there are so many other job opportunities around.

It was made more difficult in New South Wales because the commission had two problems: one, some findings of this Committee after the last election and, secondly, legally. The commission was concerned about the upper House counting procedures adopted in 2019 and made a number of suggestions about ensuring the count was done properly for the Council. As a result, I did a minor consultancy with the Electoral Commission before the election on the order of counts—preferential counts, which preferences to count and the like—and the first thing I raised with them was when they told me that they were opening both ballot boxes for pre-polls; I suggested that's not something you should do. In Victoria they don't do it. Federally, they don't do it.

The commission said that they'd been instructed by this Committee previously that they must pay more attention to the Council count. As a result, there was only a limited number of pre-polls counted on the night, because for every pre-poll they opened, they had to also open the Legislative Council ballot box. While we got 95 per cent of the polling place votes counted, we only got a little over 20 per cent of the pre-polls. The figures are all set out in my submission. That meant that on the night we were quite unclear in a number of seats about the result. It was complicated by redistribution and by a significant increase and creation of new pre-poll voting centres. Also, the pre-polls behaved very differently in 2023 compared to 2019 for a number of campaign reasons, which meant that on election night we thought the Labor Government had won a majority but it turned out they didn't.

The pre-polls behaved differently and we had a rather bad sample of pre-polls. The solution is to count more pre-polls. The two things that can be done are, one—and this is a recommendation that I think the Committee should make—the Electoral Commission put more attention to counting the Assembly votes and leave the pre-poll Legislative Council boxes shut down. They're all secured on premises and they should be counted after. That's the procedure used in Victoria and it's also used federally. I think that's the procedure that will be adopted in South Australia and Western Australia when they move to only counting lower House votes. That would allow more pre-poll centres to be counted for the lower House on the night. It takes longer to count one pre-poll upper House ballot box than it does a lower House, just simply because of the size.

The second thing—and it's a recommendation the commission has recommended and has already been implemented in both Victoria and federally—is to allow the opening of the pre-poll ballot boxes before 6.00 p.m.

for unfolding and sorting. It's the unfolding of ballot papers, particularly in the upper House, which can be one of the big delays in the whole counting process. You have to unfold. The aim is to do that before reconciling the rolls—have the ballot papers sorted into piles before counting starts from 6.00 p.m. That would substantially increase the ability to count votes.

The Electoral Commission has said it only counted 20 per cent at the last election. The Federal electoral office counted nearly all pre-poll vote for the Lower House. Victoria counted all within-district pre-polls. Victorians have a more complex system because they put all district ballot papers in the same ballot box, so they start sorting much earlier to separate them into districts first. But they still manage to count a substantial number. In New South Wales, as I said, we only got a little over 20 per cent and only about 14 per cent of after-preference counts, and that made it harder to know the results on the night. That requires some legislation to allow that and the setting of procedures. The two suggestions I've made both apply to the Federal and Victorian elections, and they've worked fine over several elections.

One other minor change was the commission did not do indicative two-candidate preferred counts for a number of types of declaration votes: provisionals and new enrolments, and there's one other small category. That wouldn't normally matter. There were only 1,000 or 1,200 votes in each category. It did actually matter in Ryde. We had about 1,000 votes there which we had no preference count on because they didn't do it. I've suggested that, particularly in close seats, those inductive preference counts be done for all votes. If there are difficulties with conducting those counts, it is a possibility that you could no longer do the indicative counts in safe seats. The Commonwealth does indicative counts at all times.

In Queensland, by comparison, they do indicative counts on the night, but in all seats which are absolutely clear at the end of the night, they don't continue with them after the election. That causes a few difficulties for media in trying to reconcile what the numbers are. But it's a lot of extra additional work to be conducting preference counts for results which we already know. I would point out a problem of Victoria not doing that is that nobody gets the final correct two-party preferreds by polling place and two-candidate preferreds. We do get that in New South Wales because all ballot papers are data entered. I have made a number of just basically counting procedure changes and I hope the Committee considers them.

The Hon. SAM FARRAWAY: Thank you, Mr Green, for appearing. I always find your input very interesting. I think you had everyone's attention with the opening statement. I wanted to drill straight into the opening of the ballot boxes and the counting and sorting. Of your recommendations, is there one that is more effective than the other? Or do you feel as if we need to keep the process of opening the LC ballot boxes and that process in the early voting centres—so we should go down that path of having the secure conditions and the EVC, the centre, actually doing that on polling day itself, which is one of your recommendations?

ANTONY GREEN: As I understand the procedures, the EVCs don't count necessarily on premises. They're brought back to the central counting centre. The Commonwealth has moved towards having large processing and organisational centres—big sheds, as many of you would know—in which these counts have space to be conducted. One of the problems the NSW Electoral Commission has is getting big enough space to conduct multiple counts at the same time. Because you have to do some of these early voting centres as parallel counts.

The problem with the Council ballot box is—as long as ballot boxes remain sealed and you have a record of that seal and they're on the secure premises at the returning officer's office, they're on secure premises. The reason why you want to count them at a polling place is so you can be sure that they haven't been interfered with between the polling place and being returned to the returning officer. The Commonwealth for that reason—that's why it leaves the Senate ballot boxes closed. I think New South Wales should adopt that procedure and just count the Assembly votes.

The Hon. SAM FARRAWAY: But in every electorate there is the returning office.

ANTONY GREEN: Yes.

The Hon. SAM FARRAWAY: The returning officer's position and their office, which is the main EVC usually, where all those pre-poll votes come back to—so the idea would be though, in your recommendation, that at that main centre in that particular electorate, we should be opening both the LA and LC boxes on polling day itself under secure conditions and start the sorting process?

ANTONY GREEN: No. Let me step back there. I'm recommending that the LC ballot boxes don't be opened on election night. Just stick to counting the vast numbers of pre-poll Assembly votes you have. My recommendation, one, is that that recommendation be made by the Committee about allowing the commission to determine which boxes are counted. But the second thing for the legislation to allow the ballot boxes to be opened early—it's been used at the last Federal election. From 4.00 p.m. they allow the Assembly boxes to be opened. It's done under secure procedures, where all mobile phones have to be left outside. It's simply a process of opening,

unfolding and an initial sort. They don't start to count how many. Of course, scrutineers can be present and observe and will make some rough estimate of what they're seeing done in that count. But they can't report it till after six.

The Hon. SAM FARRAWAY: I know this could be a tough one, but have you estimated roughly in your professional experience how much more of the lower House pre-poll vote could be counted if you didn't open the LC boxes at the polling place?

ANTONY GREEN: They only counted 20 per cent at the New South Wales election. It takes longer to count those Council ballot boxes. If you can only do one pre-poll centre, one early voting centre, because you had to open both boxes, you can at least be sure you can open a second at least and get it counted. And there's a high probability in some of these places you could open a third. There are two, three, four in most centres. The country areas—I'm not exactly sure in country areas. There are a lot more early voting centres. I'm not sure if they're all brought to a central centre. I'm not sure in Barwon if the ballot boxes from Moree are sent all the way over to Broken Hill on the night or not. So it may be slightly different in the country.

The Hon. SAM FARRAWAY: I think the majority of the rural electorates—the majority of the pre-poll votes are back in that centre on polling day. In Barwon or Murray there might be an exception. But I suspect you could, in particular in the regions, almost see double the pre-poll vote counted if you were to fine-tune the process of maybe not opening the Council boxes at the polling places.

ANTONY GREEN: Under what I'm proposing, the Commonwealth managed to count every pre-poll centre in New South Wales at the last Federal election. New South Wales only got 20 per cent of the votes counted. Admittedly, the Commonwealth has a stronger staffing arrangement for a variety of reasons. But I still think, if you could've counted 60 to 70, which I think you should be able to at least do—

The Hon. SAM FARRAWAY: Because I think the people want to—

The CHAIR: We are running out of time. I will try to come back to you, Mr Farraway.

The Hon. ROBERT BORSAK: I note that your recommendations are all around speeding up the vote for the LA, which is where government is formed and it keeps the voters happy because they can get a result on the night rather than have to look at projections which in the end, because of the nuances of pre-polling, don't quite work out that way. But have you given any thought to further computerising voting? Because we've seen in the last decade or more the rise of iVote and then it being touted as a potential for everything and then seeing its collapse and failure. It's still being used for what it was originally meant for. Do you see anything happening in that space that is worth considering?

ANTONY GREEN: I'm not keen on iVote. I'm a believer in attendance voting. You should turn up to the centre to vote. Now, you could have some form of electronic voting. The ACT election in October—they'll take more than 70 per cent of their votes electronically, most of them as pre-poll. It can be done. You have to separate the marking off the role from the voting. In 20 years time, if electoral commissions can still get access to the volume of paper and offset printing machines to print the volume of ballot papers in a short period of time, I would be very surprised. The commissions have to order the paper 18 months before the election to get it and to source where it's from. It's getting harder and harder. These are now the largest paper-based events occurring in Australia and it's getting harder and harder to get the paper. It's getting harder and harder to get the machines to be able to print the ballot papers, especially upper House.

The Hon. ROBERT BORSAK: We've heard evidence in the past from the commissioner—and I'm sure we'll get some more of that—that their systems internally just for processing and recording all the manual votes that you're talking about are also behind the times. Do you have a view in relation to that?

ANTONY GREEN: Once upon a time electoral officers—polling places were staffed by bank clerks, local government clerks, people who were used to using the same form all day, counting bits of paper all day, how to manually balance a set of ledgers. Fewer and fewer people have those skills these days. They take less cash. You work in a shop; everything is balanced by the computer. And then they come to do election night and they get one of those funny little rubber things with the dimples on top and a bunch of rubber bands and try to figure out what to do. I think the general skills of people in doing this sort of work are not there like they used to be. That's putting more and more pressure on electoral commissions and IT procedures.

As ballot papers have got bigger and bigger, it's also getting harder and harder. It is physically more difficult to count the New South Wales Legislative Council ballot paper than the Senate ballot paper. The Senate ballot paper can be folded up in one direction. A lot of people fold the Legislative Council ballot paper in both top and bottom and left and right. That makes it harder to unpack and unfold. There are all sorts of reasons like that—good reasons—why we shouldn't be counting the upper House pre-polls on the night if it's only going to get

in the way of counting more lower House ballots. But electronic voting is coming, I would say. But I don't really support the extension of internet voting.

Ms CATE FAEHRMANN: There are some submissions that talk about solutions to reduce the size of the Legislative Council ballot paper, one of which, of course, is—and it would require constitutional change, I understand—to reduce the need to run the 15 candidates and other things. Did you have any recommendations or views in relation to that? Because, clearly, that has been an issue for some time.

ANTONY GREEN: We will learn a lot on 9 March next year when Western Australia conducts its new upper House election system. They're electing 37 members at large, with a system very similar to the New South Wales upper House. I think they're all printing more than 20 candidates on the ballot paper. If Western Australia isn't capable of printing a ballot paper or printing it in a size which can be scanned, it will be very interesting to see. We have run into a problem that we are electing more and more members with a system of preferential voting when the preferences are becoming less and less important as the quota shrinks and whether we should be just moving simply to a straight proportional representation system without preferences.

If you move to a proportional system with no preferences between parties, you then allow a system which allows people to choose candidates of a party or not. Or do we go to a closed system? But there is a limit to how you can use the proportional representation by a single transferable vote system that we use in New South Wales. If you have to print those candidates there, you are going end up with large ballot papers. People are so used to preferential voting in this country that other forms of proportional representation that do not have preferences don't even get a look-in, because everybody expects there to be preferences. I think that's one problem of trying to redesign the ballot paper in the New South Wales upper House system. The next Western Australian upper House election will be a good test of how far you can extend this system.

Mr NATHAN HAGARTY: What are your thoughts on optional preferential voting and whether that confuses voters, given the difference between Federal and State?

ANTONY GREEN: It doesn't confuse people of New South Wales. It may confuse people when they come to vote at Federal elections. Certainly, if you look at the 2019 election, which was only conducted about seven weeks after the New South Wales election, the informal vote went up to 7 per cent at that Federal election in New South Wales, which is the highest it has ever been. Clearly there is confusion. It always surprised me in 2019 that the Labor Party were handing out one-only how-to-vote cards in seats like Bankstown, Fairfield and Cabramatta, where English literacy isn't great. I think that made it worse at the Federal election in those areas because people were only voting one. If you had encouraged parties to put more numbers on the how-to-votes, it could be useful for avoiding that confusion. But I would say it that it requires a referendum to remove that from the New South Wales Constitution.

Ms JANELLE SAFFIN: I want ask you, Antony, about truth in political advertising. This Committee has been tasked with looking at it. Do you have any thoughts about it?

ANTONY GREEN: Yes, I do. The problem is it becomes a glorified fact-checking process. I think the commission in South Australia, which has this power, made a finding in one election that a Labor Party ad, which talked about 102 schools being closed, was wrong and it should have been 67, or something. You end up with these sort of fact-checking things. You find parties will suddenly make some extravagant claim, right at the end of the election campaign when it's too late for any fact-checking to be applied. The second thing is, as we saw at the referendum, instead of making claims, campaigners start to ask questions. How can you do a fact check on a question, on a publicity campaign?

The third thing is it tends to politicise the poor old Electoral Commission. For instance, say at the referendum the Electoral Commission was responsible for sending out the yes and no cases. They had absolutely no facility or power to fact-check or change those, but still had to post them out. I'm very cautious about asking an electoral commission to get involved in what's essentially a political argument. Most promises made are often about what a government will do or try to do after an election, and there's no way they can be fact-checked. I can understand why people get very interested in this subject, but it's very limited in terms of what can be fact-checked.

Ms JANELLE SAFFIN: Thank you. I think it's a lot of nonsense, but that's my personal view.

The Hon. CHRIS RATH: I am interested in any observations on the number of pre-poll locations and the period of time in which pre-poll should take place. It's always a constant discussion amongst political parties. Behaviourally, how does it change things, depending on how many locations you have and how long the time is? I assume there is an element of supply creating its own demand, in a sense. I think we've all seen on election day that people walk past a pre-poll location. They have no intention of voting that particular day. They might be doing their shopping. But then they will say, "Oh, are we able to vote today?" And then they just wander in and

vote, even though they probably could vote on election day. Do you have any observations on that, given your submission focuses a lot on pre-poll?

ANTONY GREEN: I have an observation from the last South Australian election. The seat of Finnis, which is based in Victor Harbour south of South Australia, had a pre-poll voting centre and it was right on the main strip of town. It is essentially a one-town electorate. They had the highest pre-poll voting rate because people saw it and walked past it. In comparison, Frome, which has lots of little towns and only had one pre-poll voting centre, had very few numbers because people never saw it. The same tended to occur in urban seats. If it was in an obvious place, it got more people. If it was somewhere out of the way, it was difficult. I particularly remember the electorate of Holsworthy at the general election. There was one pre-poll centre at the previous election. There was a redistribution, and in 2023 there were three pre-poll voting centres, all different from where the previous one had been. You had a new one in Bangor and a new one in Liverpool. I just looked at those and thought, "They are not going to behave like Hammondville at the last election." Everyone is aware of some of those difficulties.

New South Wales shortened it to one week, and you still got a record number. The difficulty with pre-poll voting is once people have done it, they have a tendency to do it again. They find it easy; they find it convenient. The ACT and the Northern Territory have made it absolutely clear that they are moving towards a voting period in which people cast over that period. Other States and the Federals have been resistant to doing that and have tried to tighten up on pre-poll voting, but voters are demanding it. If the commission, having had the period of time shortened, hadn't expanded the number of pre-poll voting centres, I'm sure we'd all be here talking about how there was queuing at pre-poll voting centres.

The Hon. CHRIS RATH: In terms of your suggestion of starting the opening and counting of early voting centres before 6.00 p.m., you're not saying count them; just sort those particular votes. If you did start counting them before 6.00 p.m., you might start having results come in before the ballot closes. I don't know if you have observations about how that might impact the ballot, if results are coming in earlier. Obviously, it already happens federally in the case of Western Australia in that, because they are so far behind—three hours behind, or whatever—you're getting results from the east coast coming in while people in Western Australia at 4.00 p.m. or 5.00 p.m. might still be voting. You're suggesting just sort and—

ANTONY GREEN: Just to clarify, it should be for sorting. You open the ballot boxes, unfold the ballot papers, do some initial sorting and roughly validate the numbers against how many were marked off the roll. That's what you're trying to do. Then, at six o'clock you start counting. At six o'clock you can open the envelope to find out what the indicative preference count is as well. There are no numbers entered into any computer system before 6.00 p.m. Even in New Zealand where they do a vast amount of actual counting on the day before the polls close at 7.00 p.m., at 7.00 p.m. they start to enter the numbers in the computer system at that point.

The opening and sorting is conducted in secrecy. Scrutineers can observe it. Of course, scrutineers will try to work out what the numbers are on those pre-poll centres—that's there. But they can't speak to anyone before 6.00 p.m. The commission doesn't formally count until 6.00 p.m., and there is no entry of numbers into computer systems until after 6.00 p.m. So the escape of results just isn't going to happen. The concern would be people on Twitter who start saying, "I've heard this count from such and such." People just make stuff up on Twitter. But I don't think it's going to escape.

The Hon. BOB NANVA: I've received anecdotal evidence from scrutineers about the manner in which counts are undertaken during the evening and with respect to postal votes and declaration votes. Do you have any observations more broadly, operationally, about the Electoral Commission in terms of whether they adequately prioritise those divisions and vote types that have the greatest electoral significance?

ANTONY GREEN: Yes, they do. One of the consultancies I had with the commission was on order. The postals and other declaration votes were dealt with centrally. On election night, I came up with a list for them of the order to do the postal votes on election night. If you go back and look at the figures that came in, it was starting from the closest seats onwards. For all the post-election counting, the commission looked at the results on the night and determined the order they would do. In terms of the centralised counting, there was some effort put into doing them in an order which made sense in terms of the greatest interest in the count. In all the post-election counting, when they did the start of the postal count and the pre-poll counts post-election night, Ryde and Terrigal were two of the first seats they did in each one because they were the close ones.

I think there are always problems in polling places in particular, on the night, with less and more experienced staff conducting it. There are some polling places which reported their Legislative Council count which were not very well done. I think there was one where the count wasn't conducted correctly. They didn't uniquely identify every column. Sometimes this is staff just not paying attention. The commission has got a very difficult task. It's got a lot of day labour hired for one day. They have to train them to understand the process. There are always new people and sometimes they're getting it wrong. Around the State, when I looked at the

counts that came in, there were only two or three polling places where I spotted that they'd made a mess of the count. One of them was in Willoughby; there was a pre-poll centre in Willoughby.

Mr TIM JAMES: Hear, hear!

ANTONY GREEN: There was another pre-poll in Wollondilly where they mucked up the count. You could see that when you looked at the figures on the night, and it was fixed in the check count. There were very few differences I noticed in the lower House between the check count and what eventually came out, and it was there on the night, so it was quite well done. It was surprising we had some electorates that reported very few—were very low in terms of their preference count on the night. Sometimes that's caused by the count—the order of the candidates not being what was expected and staff wondering why they were doing such and such a preference count.

I also noticed some electorates—Kiama was one, but a couple of the electorates I listed in my submission—where there was a low count of pre-polls on the night, for reasons I don't quite understand. I think they're questions and I presume the commission will follow up on some of those. But the one thing I would say is if you don't open the Legislative Council boxes—a less experienced staff member who tries to conduct the Legislative Council count at a bad time, compared to trying to do the Assembly count, will get into a complete mess. They're difficult things to do. If you devote too many staff to it, you end up not getting the Council count done and you end up not getting the Assembly count done.

The commission also concentrates, because they don't want their staff continuing to work after 10.00 p.m., on counting the ballot boxes they think they can count in time. There's no point opening a box at 9.00 p.m. which has got 6,000 votes to count because you're not going to get it counted in time. So there is an effort to make sure that if they open a ballot box, they count it. That's the difficulty with opening the Legislative Council ballot boxes: Once you open them, you have to count them. You can't just seal them up again; you have to count them. If you don't open those Council ballot boxes in the first place, you are able to count the Assembly.

I think the commission did a pretty good job. Just to test the new procedures, our data entered the ballot papers. They were able to conduct a recount in Ryde; I haven't heard any complaints about how that was done. I understand the procedure was quite good, so I'm relatively confident. I'm happy that the commission did a pretty good job. It was the pre-poll vote that was missing. It was not counting all the declaration votes at the central counting centre to two-party preferred. But beyond that, I think they did a pretty good job compared to some of the previous ones. I think they did a pretty good job.

The CHAIR: Thank you very much for appearing before us again today. It's much appreciated, Mr Green. You'll be provided with a copy of the transcript of your evidence for corrections. Committee staff will also email any questions taken on notice from today and any supplementary questions from the Committee.

(The witness withdrew.)

Mr BEN RAUE, Electoral Analyst, affirmed and examined

The CHAIR: I welcome our next witness, Mr Ben Raue. Thank you for appearing before the Committee today to give evidence. Please note that Committee staff will be taking photos and videos during the hearing. The photos and videos may be used on the Legislative Assembly social media pages. Please let Committee staff know if you object to having photos and videos taken. Before we start, do you have any questions about the hearing process?

BEN RAUE: No questions.

The CHAIR: Would you like to make a short opening statement before we begin the questions?

BEN RAUE: Sure. Thank you to the Committee for the opportunity to present today. I put a bunch of things in my submission and they're ranked in a bit of an order, starting from relatively small, minor things that would be relatively easy to change, and then at the end it gets into some pretty major changes that would require referendums to change elements of the Constitution. I'm happy to address whatever parts of the submission or other issues are of interest to the Committee. I wanted to just briefly touch on those issues quickly.

I think it's about time that we changed the rules around who gets a name above the line for the upper House. It's a bit of an unequal situation we have now that then incentivises the creation of unnecessary parties. If you look at a lower House ballot paper, every candidate's name is treated with an equal status and the party name is a secondary matter. But because in the upper House the above-the-line box is the more important part, parties

get a name above the line; Independents get nothing above the line. We've seen evidence at Federal, State and local councils that that has an impact.

As I said, it also incentivises the creation of parties, really just so that there's a brand name for a person. We saw that at the last election with Elizabeth Farrelly. I think it would be a fair judgement once an Independent group has reached the standard to be on the ballot paper, whether it's the name of the first candidate or the surnames of the first two candidates, or whatever format the Parliament or the commission wants to stipulate, to give them a status that is equal and maybe doesn't require the creation of unnecessary parties. I also mentioned that I think it's about time for an inquiry into local government elections. I spoke at a previous inquiry into local government elections, but there are a few issues that I mentioned there.

I also testified at a similar hearing for the Federal JSCEM last year, and the big topic there was around expanding the size of Parliament. I think that's also an issue for the New South Wales Parliament. We've had 93 seats for the last quarter of a century for the Legislative Assembly. That is actually smaller than the number of seats in the Assembly for the second half of the twentieth century. In the year 1901 we had 90 seats in the Assembly. The size of the population of this State is much greater than it was, and I think even an expansion to something like 110 would be quite modest. I don't believe it requires a constitutional change.

I won't go through all the details of the bigger changes, but I did also suggest in there that I think that there should be a change to multi-member proportional representation for the lower House. I'm also arguing that we should look at—it would require a referendum change—a move away from using preferential voting for the upper House. I think when we're electing 21 members or 42 members, you no longer get much benefit from the use of preferences. It's an enormous task, both for the voter and for the commission in counting those votes, but I'm happy to go further into that if you'd like. There's some other stuff that's come up, but I'll leave it there.

Mr TIM JAMES: Thanks for your submission. On your assertion that five-member districts ought to be the way forward, it has been done before in New South Wales but it has been dispensed with. There are arguments and concerns around the relative certainty, clarity, accountability and/or confusion that might arise when there are seemingly five members in one seat. Is it not the case that a single member, accountable to a single community, is a singularly clearer and better system of representation?

BEN RAUE: No, I don't think so. If we're talking specifically about local representation here, as opposed to the representation of the whole Chamber, we at the moment have a system where about 49 per cent of people actually gave their primary vote to the person who has ended up representing them. That's a large number of people who voted for someone else. You have a system with three, five, seven members—something like that. I don't think the benefit of having a singular representative who is accountable really makes sense because, ultimately, that one person isn't the one who passes laws; it is a parliamentary Chamber that makes these decisions. When it comes to things like having someone that you can appeal to, that you can ask for help when you have a problem, having a number of members of Parliament who have different approaches and different political positions gives those voters more options. It can also provide more competition. An MP who is a better local member and represents those voters better has an advantage over their colleagues who maybe don't do such a good job.

Ultimately, whatever benefits there might be from having a single member, having a result where more people are represented by someone they voted for and the result more reflects how people voted is worth it, even if sometimes it means those electorates are a bit bigger. I would also say, though, that that's one of the benefits of expanding the Parliament—yes, these electorates will get bigger if you are electing five members, but you would partly offset that by adding some more seats to the Assembly. It might be that the seats are three or four times as big, rather than five times as big.

Mr TIM JAMES: I just question the merits. If I went to the people of Willoughby and said, “Your electorate is going to get much bigger—so less local—and you are now going to have five members of Parliament instead of one,” I don't think I'm going to get a very good set of feedback from the community.

BEN RAUE: I think there are other arguments about it, which is that more of those people are going to be represented. The majority of people in that area who vote Liberal will probably have a couple of people to represent them, but the rest of the electorate would also have someone to represent them. I think those voters would be happy with that. It would be a change to how local representation works, but lots of countries do it and it works really well. Frankly, I think often you look at places like Tasmania or Ireland that tend to have these—there are other PR systems that have big lists of MPs or whatever but tend to have these smaller multi-member districts.

Local representation is a really important factor in those countries and that MPs spend quite a lot of time on local constituency matters and issues for their MPs. I don't think that in Tasmania they have a problem with

lack of representation. Obviously, it's unfamiliar for voters and that's something that would need to be taken into account. I put it up not thinking that it's going to be something that's going to be implemented today—even before considering that it requires a referendum—but just to make that argument that I think moving our focus away from just having one person represent an area improves representation.

Ms CATE FAEHRMANN: You make a few suggestions about reducing the size of the Legislative Council ballot paper, some of which required constitutional change but potentially others don't. Could you expand upon those a bit? Obviously, it's been an issue for quite some time which seems to be not improving.

BEN RAUE: I think pretty much everything requires a constitutional change. One of the things we have now is we have this system where the detail of how the counting process works for the Legislative Council is embedded in the Constitution, unfortunately—all the detail, to the point where we still use random sampling for the upper House. I appeared before this Committee a few years ago and the Committee fixed the problem that we had with random sampling in local councils because it wasn't embedded in the Constitution. They couldn't do that for the State because the referendum was too big of an ask. Thankfully, it's less of a problem at the volume of votes you get at a Legislative Council election as opposed to a small rural council. But we have all these little details of the voting system embedded in the Constitution.

More broadly, we have a couple of issues, one of which is that we require every group, if they want an above-the-line box, to run 15 candidates, even though the major parties don't come close to having 15 winnable seats. That is based on the fact that it's required that a voter mark 15 preferences. It would be an enormous improvement if we got rid of that. But I go further and I actually argue that, when you are getting towards a magnitude of 21, I think preferences are really important when you are electing one MP or you are electing three or five, giving voters not just the ability to mark a first preference but mark multiple preferences.

There are lots of countries around the world that elect much larger numbers of MPs in one constituency. Most of the time, in almost every country in the world, voters just mark a single box on a ballot paper and that's it—they are done and there are no preferences. Preferences have that value when you are electing one or three or five people. When you're electing 21, over the last 20 years or so, I think for about half the elections we've held one seat was decided by preferences in the upper House and the other 20 all went the same way. In the other elections, including 2023, nothing happened. If we hadn't counted a single preference in 2023, nothing would have changed.

I think those preferences have value; I'm just not sure how much value they have, when you think about this enormous ballot paper that voters receive and the enormous warehouse that I think is still in Riverwood, where the commission has to ship in all the ballot papers and data enter them all. You mark a single box and they just get tallied up on the night and we pretty much know the result on the night. I think that is the first part of it. We have all of this infrastructure to vote below the line but, basically, the threshold to actually win a seat below the line is so high that it has literally never happened in the 20 years we have been using our voting system.

If you moved away to a list system of PR, you could have a closed list system, which would effectively function like what we have now. You just vote 1 for a party and, if that party wins three seats, the first three get elected. But it would also open the door to having other versions of list systems, where voters have more of a say and where they can vote for individual candidates and they can either partially or fully influence who gets elected. There are voting systems in countries like Finland where you don't vote for a party, you vote for a candidate. The party receives four seats and the four candidates for that party who receive the most votes win those four seats. There are lots of systems like that.

Part of my recommendation is that we take out the detail and we don't have all that detail in the Constitution so that we can specify the detail in the legislation. It's a radical idea, but preferences are really crucial in those one-member seats or if we had multi-member in the lower House. I'm a big fan of preferences at that level. But as the volume of people you elect goes up, the burden gets worse and the value goes down. The burden is for the parties, the burden is for the commission and the burden is for the voters who have to look at this big ballot and try and work out who they are going to vote for. It's a big ask.

The other thing I would say is that, right now, if we were to move the upper House from an eight-year term to a four-year term, it would significantly make that process of running that election much more hard. If you used a list system, it would barely make an impact. It would slightly lower the threshold for the last person to get elected, but the administrative burden would barely go up. That's my case for the upper House, if I was to wipe the slate clean and make it. But I think it would have a lot of benefits for the way that the Parliament would work. Whether you have single-member or low-level multi-member seats in the lower House, you can then have an upper House that is more pure, proportional and, at that level, can be a lot simpler for people to vote.

Mr NATHAN HAGARTY: Hopefully you remember a blog post you did on 19 March 2023 about the potential need for redistribution before the next election, based on growth in seats like mine and the north-west and the south-west. What might arise from that is the abolition of another rural seat and the creation of another seat in Western Sydney somewhere. One potential solution to my regional cousins losing a seat all the time is more seats, as you have suggested. I want you to speak to that. Also, why have you landed on 110?

BEN RAUE: Look, 110—you could go at any level. I think that would be a number that would reflect the last few decades of population growth, so that's where I've landed. But you could go anywhere in between. You don't have the same issues you have federally, where there's an interaction between the lower House and the upper House. As far as I can tell, in New South Wales it's just a matter of the Parliament choosing a number. In the past, they bumped it up to 109 in 1988 and then they bumped it right back down to 99 in the next election and then in 1999 they reduced it to 93. In living memory, parliaments and governments in New South Wales have fiddled with that number, and you can have various motivations for that. But I think there is value in it going up.

As far as the redistribution is concerned, there are a couple of issues there. Part of the issue is that population growth, as you would know, in New South Wales is very concentrated in a few places. I see this also when I look at local government data. There's the outer south-west, the outer north-west and then there's an area around Parramatta that is growing enormously fast while large parts of New South Wales aren't growing very fast. When you draw electoral boundaries, you are trying to draw them so that, in the short term and in the slightly longer term, they all fall within an equal range.

It might actually not be possible to draw Leppington within that range. Our rules don't require you to have every seat to stay within the range. The rule is if you are within one year of an election and one-quarter of seats are out by more than 5 per cent for two straight months, then that triggers a new redistribution. It's fine if Leppington and Riverstone are enormous. But if you have dozens of seats, the number is 24. If you have 24 seats that deviate by that much, then it triggers a new redistribution. Right now—I did some numbers this morning that suggest that probably we're going to avoid that situation slightly, but not by much. I did some quick calculations and, if there was 0.5 per cent faster growth in five more seats, then I'm expecting that you would hit that number. I wouldn't rule out the possibility they may have to do a redistribution this term. I don't think they will, but I couldn't rule it out.

When you look back at the last election, there are places like Riverstone and Leppington where it is really difficult to draw a seat that's both populous enough right now but won't be too populous in the near future, because those areas are growing so quickly. It does often require the map makers to pair slow-growing suburbs with fast-growing suburbs to try to balance that out. There are also places where seats were drawn small "c" conservatively to minimise the amount of change when they probably should have been more drawn like Barwon, which is a slow-growing electorate, which was drawn to be under quota at the start of the election cycle. There was probably the potential that the commission could have had less seats and be in the situation they are in now, even if in a place like Leppington or Riverstone it's not possible.

It is true that if you expanded the Parliament by 20 seats, you would no longer be talking—at least in the short term—about abolishing seats in one region. You would be adding seats all over. You would probably then go back to the same trend of urban seats growing and rural seats shrinking. That hasn't always been the case but is usually the case, but you would start from a higher baseline. So there is value in that. The New South Wales Parliament could also pass a law that said we'll have 101 seats now but we'll now fix that with population and add a new seat every few years. There are countries that work like that, where if Western Sydney is growing really fast, we don't have to take a seat off the country, we can just add a seat. Again, the Federal Parliament doesn't have that privilege. Seats in the House are based on the number of seats in the Senate, but that doesn't apply to New South Wales. And, as far as I can tell, there are no constitutional barriers to something like that. Check with the lawyers, but I'm pretty sure.

The Hon. ROBERT BORSAK: Mr Raue, in your recommendations you make a case for harmonising the upper House re-election to the lower House re-election to four years. What problem is that addressing in relation to the current election processes and representation in the upper House?

BEN RAUE: I think a few things. I think there's a question of democratic legitimacy when MPs have a very long term. Obviously, plenty of members of Parliament serve much longer than a four-year term, but they renew their mandate. I think it's particularly concerning when people leave their party and continue to serve for such a long time. I'm not a fan of laws that ban party-hopping or expel members from Parliament if they no longer belong to their party. I think that's bad. If someone leaves their party shortly after getting elected, and they have seven or eight years before the next election, that's democratically problematic.

The Hon. ROBERT BORSAK: But that's not really compelling, is it?

BEN RAUE: If you were to try to design a new electoral system from scratch and someone suggested an eight-year term, you would probably be laughed out of the room. I don't think you would do that from scratch. It's interesting that the WA upper House, when they abolished their regions and they went to a single-at-large region—they're electing 37 members all in one district—they could have gone to two halves elected four years apart, but I don't think that would have been considered acceptable for a new Chamber. So that's part of the argument.

Also, these kinds of overlapping terms come from a long history in this country, or in the whole Westminster system, of designing upper Houses that are a cooling dish, a house of review and a place that moderates the lower House. Traditionally, those upper House reforms were pretty much always something that would make the upper House more conservative than the lower House—either restrictions on who could vote or long terms or things like that, or just having an appointed upper House, which did traditionally mean they would be blockages for Labor governments and they would not really get in the way of a conservative government.

We don't really have that now. Because we have these long terms, effectively what that does is when you have a first-term government, they have a harder time in the upper House than if you've got a second-term government. I would argue that we now have better ways of creating that difference between the upper House and the lower House. Having that high-magnitude upper House that's elected proportionately that brings in lots of small parties—

The Hon. ROBERT BORSAK: Hang on. You made an assertion there that a second-term government would have an easier time in the second term in the upper House. If I look back on the 12 years that the Coalition were in power, for example, I don't think they had an easier run in the upper House in any term when they were re-elected. Where's the evidence for what you said?

BEN RAUE: They did win that first election in a landslide, so that probably doesn't—

The Hon. CHRIS RATH: The third term was definitely the hardest.

The Hon. ROBERT BORSAK: They were all hard because you had no majority in that House at all.

The CHAIR: Order!

The Hon. ROBERT BORSAK: So what's changed?

The Hon. CHRIS RATH: The second term was actually quite good.

BEN RAUE: I take your point. I'm thinking of scenarios where a government is more narrowly elected, whereas when you win in a landslide, of course—as they did in 2011—maybe that changes that equation. But, generally, what we get when we look at upper House results is if the State has voted in a progressive direction, you get a progressive majority, but you don't get a one-party majority of Labor or Coalition. We don't have a Labor majority now in the lower House, but generally lower Houses have been electing majority governments. When you mix those two halves, you produce a situation where you are mixing in votes from four years ago that are often quite different to how voters have voted in the most recent election, which some people might like but a better way of having that difference is by using proportional representation.

What we have now is an upper House that allows small parties to get elected—The Greens but also smaller parties than The Greens—the shooters, fishers and farmers, animal justice, legalise cannabis and parties like that. It means that if you were to elect the whole Chamber all at once, unless they won an enormous landslide—and in that scenario I would argue it's probably fair enough that a party wins a majority in both Houses—other than that, you would have an upper House that would be broadly sympathetic to the Government but not members of the Government, which is a good way to ensure a balance where an upper House is not a blockage to a government but is neither a rubber stamp to a government.

The Hon. ROBERT BORSAK: I would argue that that's actually happening now.

BEN RAUE: I think we largely are, but it would work better if the whole Chamber was elected at once. It would remove that problem of the eight-year terms and questions of legitimacy about members who serve such a long term.

Mr STEPHEN BALI: Thank you, Mr Raue, for your presentation. It would probably be better if we were doing this late at night around a couple chardonnays—not that I drink. There were a lot of assertions that you had done and selective fact presenting because in a lot of European Parliaments, when you have the vote—and a few of us around this table watch European elections—there are actually two rounds. There's a run-off round. So instead of having preferential voting, what happens is the top two candidates then fight it out two weeks later. I'm not too sure if the Australian public would like to come back two weeks later for another vote.

Everyone can argue in different ways about having multiple MPs in one area. The member for Willoughby and I probably differ on many things, but if someone walks into our office—he has probably had it as often as I have, where someone says, "I didn't vote for you at the last election." Even if they say to me they voted for me, I'm here now as the MP and I'll make representations for their specific issues if they have housing, mental health or policing issues—whatever. The challenge to the idea that you put forward is politician shopping. If you don't get your way with one person, go to another. The other thing culturally, as far as New South Wales is concerned, is that you do have duty MLCs that look after seats. If you're looking at policies, there is a range of politicians you can talk to. I'm not too sure if a lot of the stuff that you've talked about today actually appeals to or really applies to New South Wales, because I see—

Ms CATE FAEHRMANN: Is there a question, Stephen?

Mr STEPHEN BALI: Yes. Have you looked at other issues? It's one thing presenting that we should have multi-MPs, but there are also objections to that. Would it really work, based on the culture of New South Wales?

BEN RAUE: I don't see what is special about New South Wales that would prevent us from having a multimember system. We find ways to address the fact that parties don't have representation in big parts of the State and that is good. The upper House is an element that really improves on what our electoral system would look like if we just had a lower House alone. I don't think there is anything special about New South Wales that would prevent us from having a different kind of system. The primary reason I'm suggesting going to multimember electorates is not so there are multiple members in an area; it is so that the Parliament overall better represents how the voters have voted. Parliamentary elections, in the lower House in particular—the upper House is very representative, particularly if you just look at the half that has been elected at that election—doesn't come close to representing how the voters vote.

There is enormous over-representation of the major parties and parties that have under-representation. Generally, the share of voters who are represented by the person they voted for is quite low. You have much higher proportions if you look at places like Tasmania. I don't think, when you talk about New South Wales political culture, that we are so different from Tasmania or Ireland or places like that, that have multimember electorates. There are a bunch of electoral systems around the world, including two-round systems—and I'm not suggesting two-round systems. Generally, PR systems are a single round, and those two-round systems that you are talking about are a different way of doing single-member electorates. A country like France that uses a double-round system—generally, when people are analysing electoral systems around the world, it gets grouped quite closely with Australia because they are seen as being similar, even though there are, obviously, quite significant differences.

There are countries that elect the whole parliament with no electorates as a proportional system, but I'm not suggesting those. I am specifically arguing for low-magnitude PR. There is research that I have linked to in here about how, when you do that, you get a lot of the benefits of proportionality, but you don't lose a lot of the benefits you get from single-member electorates around accountability and a small number of parties in government. I am not just arguing for any voting system in Europe; I am saying there are particular kinds that the evidence suggests work better. Our culture has evolved around the institutions that we have, and I'm sure if we changed our electoral system there would be a bit of a culture shock, but I think we can handle it.

The CHAIR: Thank you very much, Mr Raue, for appearing before the Committee again. You will be provided with a copy of the transcript of your evidence for corrections. Committee staff will also email any questions taken on notice from today and any supplementary questions from the Committee.

(The witness withdrew.)

(Short adjournment)

Professor Emerita ANNE TWOMEY, sworn and examined

The CHAIR: I formally welcome our next witness. Thank you for appearing before the Committee today to give evidence. Please note that committee staff will be taking photos and videos during the hearing. The photos and videos may be used on the Legislative Assembly social media pages. Please let committee staff know if you object to having photos and videos taken. Before we start, do you have any questions about the hearing process?

ANNE TWOMEY: No.

The CHAIR: Would you like to make a short opening statement before we begin questions?

ANNE TWOMEY: Sure. You have my submission. In my submission I focus solely on the question of truth in political advertising because I thought that was probably the more difficult and technical, and it has constitutional aspects. I raised four issues in my submission. The first one was about the practical problems of a truth in political advertising type of law. That is a consequence of the fact that most of the things that are complained about when it comes to truth in political advertising concern things that aren't statements of fact. They actually concern promises, opinions, predictions and things that, therefore, cannot be the subject of verification on a factual basis.

If there is such a law as the South Australian one, for example, which many people refer to, the law is confined to purported statements of fact in an advertisement. That type of law leads to massive issues of avoidance because political parties can easily avoid its application by, first of all, making these kinds of assertions instead in speeches, social media posts, robocalls and texts and the like rather than in advertisements. They can also reformat any kind of misinformation that they want to spread. Instead it being an assertion of fact, they just make it an opinion or a prediction or even just ask questions.

I gave an example in the submission of an advertisement back at the time of the Voice referendum where it simply asked questions, but that was enough to raise doubts and concerns in the mind of the voter. There are also interesting evidential issues. If you did have a law relating to truth in political advertising, and someone made an assertion of fact that Party A has a secret plan to do death duties or whatever, how do you prove or disprove that? Does that mean that someone can go to a court and subpoena all of the messages on WhatsApp between politicians about whether or not they might have a secret plan? That strikes me as somewhat alarming and something that should be of concern to the Committee.

The second question is who is the arbiter of truth? That's the really big one—who gets to decide what's true or not—because allegations will be disputed. Assertions will be made that such and such is a fact, and other people will dispute that. The two main bodies that are mentioned are the Electoral Commission on the one hand and the courts on the other. Electoral commissions hate the idea of being involved in these sorts of things, because they see it as politicising them. They also see it as distracting them from their really important functions of running an election during election time. Because all of these issues are going to be raised in the relatively short period of time immediately before an election, when the Electoral Commission is at its most stretched, when it is trying to deliver an election. So I think, rightly, electoral commissions do not want to be involved in such matters.

This tends to leave us with the courts. The courts are appropriate bodies for making determinations of fact—that's certainly true—but the courts themselves are also reluctant to become involved in such matters, because they don't want to be politicised in determining the outcome of elections and the like. There's also a problem with the courts in terms of timeliness. If someone raises a concern about an advertisement during an election campaign, you're not going to be able to run a full-scale court case. The best you can do is try to get some kind of interim injunction. That leads us to the rather unfortunate scenario that you sometimes see in places like the United States where each political party has to allocate a whole lot of money to lawyers. They all lawyer up and have lawfare between themselves, with the aim of each side to knock out the other side's advertisements or tie up their money and their attention during the election campaign in fighting court cases rather than actually campaigning. That's the real risk in relation to these sorts of laws.

My last two points, very quickly—penalties. There are issues about what kind of penalties you include. If you say that breaches of truth in advertising laws would lead to elections being voided, then you have massive problems in terms of uncertainty and electoral outcomes until all such challenges are resolved. If you leave it as a fine, depending on the nature of the fine sometimes it's just regarded as a cost of doing business. I was once quite staggered in reading evidence to another parliamentary committee where someone boasted about the fact that they had been caught for their misleading advertisement.

They said that the publicity involved in the challenge massively increased the reach of the advertisement and was actually good value for money. So if you are paying a \$5,000 fine but there's been a huge court case about it and everybody heard about what the allegation was in the advertisement because of that, then you actually achieve your aim of misleading the public much more effectively, because of the litigation. We've seen that recently in relation to defamation proceedings, for example, where the actual defamatory statements are given far greater publicity because of the litigation rather than the actual original making of the statement.

My final observation—which is, of course, because I am a constitutional lawyer—is about the implied freedom of political communication. Any law that is made in relation to political advertising, which is the core part of freedom of political communication, needs to be very sensitive to the constitutional issues. It will most likely be treated as burdening the implied freedom. However, it will be most likely also treated as having a legitimate purpose to try and stop voters from being misled. But when you come down to issues of proportionality,

you're probably going to need to have a whole lot of defences et cetera. If you want it to be valid, it will weaken the application of the law. If you want a very strong law, it might likely be unconstitutional. That's the brief overview of it for you.

The CHAIR: We will go to questions from the Committee.

Mr TIM JAMES: Professor, thanks for a very thorough and thoughtful submission. Can we take it that you conclude that these four major problems, as you have outlined, overwhelm any benefits, perceived or real, and therefore truth in political advertising laws would not enhance the integrity and transparency of the electoral system in New South Wales?

ANNE TWOMEY: That's probably going a little bit too far. You could have a law like the one in South Australia, but the first observation is I don't think it would achieve a lot because it's very, very easily avoided. If you are deliberately wanting to send out misinformation, it's child's play to get around it. Any sophisticated political party can get around that law easily.

Mr TIM JAMES: That's what I was going to ask you.

ANNE TWOMEY: But would it have some value being there? Maybe yes. At least it might get rid of some of the more obvious ways of doing it, even though people will be moving around it. My concerns that you'll end up with lawfare-type scenarios—they are less likely to arise in relation to that kind of law simply because that kind of law is so limited in its terms that it's not going to achieve very much and it doesn't give you a lot of scope for that. If you did have a law that was actually broader and intended to be more effective, then the flipside of that is all the stuff about the litigation that goes on during an election campaign and political parties having to put aside money to be able to pay for all of that campaigning. I think a lot of that is counterproductive. We have caps on expenditure in relation to campaigns to actually press down on the costs of campaigns. That's been a really good thing and a successful thing. It could well be undermined if we started systems where we end up all trying to knock each other's advertisements out during an election campaign.

The main reason for making this submission is that I think the Committee needs to be aware that it is not all sunshine and butterflies. A lot of these bodies will come before you and say, "Yes, it's absolutely terrible, all the misinformation out there and it's getting worse." And that's true. I absolutely agree: It is terrible and it is getting worse. If I could wave a magic wand to make all advertising during an election campaign free of being misleading, free of misleading statements and make it absolutely accurate, then I would wave that wand. But what I want to point out here is it's just not as simple as that. I think that as soon as you start trying to control things like election promises, predictions and opinions—things that you can't actually verify as matters of fact—then you end up in very difficult areas. I think it's very problematic.

Mr TIM JAMES: Thank you. I concur. I personally think that the risks and downsides well and truly overwhelm any potential upsides. On the key question of who or what ought to be the arbiter of truth, do you think any jurisdiction around the world has actually answered that question and provided some semblance of balance and sense as to how that could and should be answered?

ANNE TWOMEY: I don't know enough about how other jurisdictions have done it to be able to give you an accurate answer there. I think, as I said, there are real problems in getting an electoral commission to do it. There are also issues about the courts, particularly in terms of timing and how you deal with things in the interim, but courts are certainly better than electoral commissions for doing this kind of thing. You need to have bodies that actually have it as their function to decide matters of fact and do so fairly, et cetera. That's not the sort of thing that an electoral commission is set up to do.

The other problem with doing this is that if you establish a body that's uniquely established to achieve this—so you establish some kind of body to do this—it is not giving you a consistent amount of work to employ people on an ongoing basis. You'd need to somehow attach it to some other kind of body so that people within a particular body who have a particular skill set can move over and deal with this thing during the short period of time in which these issues were raised. Maybe you could attach it to something like NCAT or some other kind of tribunal where you have people who have experience and roles in dealing with matters of determination and matters of fact. I haven't looked into it sufficiently to know precisely where you'd place it. But you'd need to somehow attach it to an existing body that has existing staff who have existing skills, procedures and practices, even though the level of work is going to be completely unstable. It will pop up every four years. You can't keep people totally employed and doing that for a full term otherwise.

Ms CATE FAEHRMANN: Thank you, Professor Twomey, for coming today and for your extensive submissions to this Committee over time. I hear what you say—and I think you argue it very forcefully and well—about how difficult it is. I want to know what can happen in the situation, for example, where it's very clear that a candidate or party distributes information about another candidate that says, "This MP voted this way," that you

can prove was not the case. What is the avenue there? That, to me, is quite easy to prove. There are other examples, of course. Is there any recourse for that at this point in time in our laws? You would think that's quite easy to adjudicate on.

ANNE TWOMEY: There used to be and I think there might still be—someone might be able to correct me. I haven't gone back to look. But there used to be a law in the Electoral Act that dealt with basically defaming another candidate. Do people know if that one still exists?

Ms CATE FAEHRMANN: We can look.

ANNE TWOMEY: At least at one stage there was where assertions are made in relation to another candidate, of fact. Somewhere in the course of my submission here, which I re-read this morning but I can't remember precisely, there actually was a case that dealt with assertions that so-and-so had voted so many times this way and a vote for this party is effectively a vote for another party, and there was litigation about it. The observation that I'd make is that if you had a law that said in these circumstances you can't make assertions of fact of that kind and if someone is wanting to make allegations against whoever it is, then they just change the allegation slightly and they don't say that you voted 17 times to let murderers out or whatever it is; they'll say that you're soft on crime or "My opinion is that so-and-so is not dealing with these issues in the appropriate way." The main concern is that even if you do that—and there may be some value in doing it—you just shift people into avoidance around it.

The CHAIR: Following on from that, one of the points you make in your submission relates to the fact that there is a difference between advertising and what is more common today, I suspect, which is the use of social media. Could you comment on that, please?

ANNE TWOMEY: Yes. That is a really big question—as to where advertising starts and finishes. Because with social media—and I am no expert on this, I should say. But with social media you can buy advertisements on social media. Political parties and the like do have a fairly big expenditure on social media. I'm not sure the extent to which that falls within the formal idea of advertisement. It probably does, or you could at least expand it to do so. Where it's more difficult, however, is if a member of Parliament just has their own Instagram or X account or whatever and is constantly putting out material, as most members of Parliament do, which wouldn't count as an advertisement and then there are bits in between about when—and, again, I have an unsophisticated knowledge of this, so people can correct me if I'm wrong. But I think you can pay the social media people to affect the algorithm so that your posts become more visible to people. Does that count as an advertisement? I just don't know.

I think the difficulty there is that we are now getting into a point with social media where the old terminology that was used in electoral laws about advertisements, which was all about going to a newspaper or a radio or a television and paying for a specific spot—that's beginning to melt away with social media and it's very, very hard to work out where the borders are between what is an advertisement and what is just a statement. In an election campaign you will see people will make speeches and then excerpts of their speech will then be used to be tweeted or whatever on social media. Is that an advertisement? Well, no, probably it isn't, particularly if you're not paying for it. How you capture all those things is quite difficult these days.

Ms CATE FAEHRMANN: When you said potentially there is defamation, the same thing could apply with a political party implying that another political party voted x number of times with the Government when they didn't. But then defamation laws don't apply there.

ANNE TWOMEY: Yes, they don't help with that. That's right. With an individual—and the thing at the back of my head which I'm trying to refer to I think was in relation to statements made about individual candidates as opposed to parties. I think the view has always been taken that if someone makes false accusations against a party and then the party returns and says, "Well, no, that's not true and here's why", that's just part of free speech and debate generally. Yes, defamation doesn't really work for parties or businesses et cetera.

The Hon. BOB NANVA: The greatest concern I've got is that the limited integrity utility that will be provided by any form of truth in political advertising reform—is that the process will inadvertently give political puffery a form of legitimacy. That is because it will never meet the high threshold that's required to ostensibly be captured by whoever is overseeing this scheme, and what that would then allow parties or campaigners to do is say, "This claim has been cleared by that election body. You can believe it. It's truthful", when we all collectively know that is actually not the case; it just hasn't met the legal threshold. Do you believe that risk effectively limits any utility or any benefit of such a scheme?

ANNE TWOMEY: I think I did raise that also in my submission and, yes, it is a concern. The problem with all of this is that if you have a system where people can challenge the electoral advertisements, the first thing is if you do challenge you give the advertisement far more airplay because it'll be on the news and all the rest of

it, so people will see more of it. The advertisement itself gets a free run. Second, as you say, if it doesn't meet the fairly high criteria—say, for example, an assertion is made in the advertisement but it's an assertion that's some kind of prediction saying that if such-and-such party gets in they will introduce death duties, and the regulator, whoever it is, says, "Well, we can't know what someone is going to do when they get in. That's just a prediction and therefore we are not going to require that to be taken off air."

Then, of course, the party that made the prediction comes in and says, "Well, there you go, our advertisement is fine", and then they get double value in terms of publicity for it without even having to pay for the advertising time. Those are the sorts of concerns that I have. The Committee does need to think through all of those problems. How would this kind of a law be used by the parties for and against each other in the future? If you think that people in your own party might well want to use it in some kind of a way against the other side, you've got to recognise the other side is going to use it the same way against you. In the end, how productive is all of this?

The Hon. BOB NANVA: Unless we can find an answer to that risk, wouldn't it be the case that, as well-meaning as these reforms might be, all we would actually be doing is magnifying the very policy evil that we're trying to address?

ANNE TWOMEY: It's quite possible. The significant risk is that you just give more airtime to the misleading information and you don't actually ever dispel the misinformation or you don't get to correct it. So it is a risk.

The Hon. CHRIS RATH: In terms of truth in political advertising—you mentioned this but I was wondering if you could expand a bit more on it. What about limiting it to the process of elections rather than to policy or political statements about how you should vote, where you should vote—those types of statements, rather than policy statements?

ANNE TWOMEY: We've already got that. So there is law already.

The Hon. CHRIS RATH: But the penalties are so miniscule.

ANNE TWOMEY: Pathetic, yes.

The Hon. CHRIS RATH: And the fact that you only determine it usually well after the election has finished—so you might go to court months after the election has concluded and it might be \$5,000 or whatever. Surely there has to be a more real-time way of dealing with it during the election campaign rather than months later potentially.

ANNE TWOMEY: The more effective way of dealing with it has been the NSW Electoral Commission getting in touch with social media organisations and asking them to withdraw things where incorrect statements are made. I understand that, both at the New South Wales level and at a Federal level, the electoral commissions are very good at monitoring this sort of misinformation about the electoral process, and asking for and achieving corrections. There are times when doing it cooperatively and asking people to behave in a civilised way can be more successful than attempting to compel it by law. As we've seen recently, if you try to compel a social media organisation to remove something from their platform, that can result in pushback, whereas if you establish cooperative codes and means of communication where you request them to do it, they're more likely to actually do it. Again, one needs to be sensitive to what is the more likely effective outcome.

It's particularly problematic in relation to social media because it's so pervasive. During the referendum campaign, social media was so much more effective in influencing people than mainstream media or advertisements of any kind. Social media is pervasive; it is effective. It is a place where there is an enormous amount of misinformation, but in order to get social media platforms to remove that kind of information, we have to be conscious of the fact that they are global entities. They are not Australian entities. There are limits on the effectiveness of our laws in being able to control them, and to some extent we need to work out—hopefully, collectively with a whole lot of other countries—ways to persuade social media platforms to behave by certain codes to remove the sorts of things that really need to be removed.

The CHAIR: May I follow on from Mr Rath's point? In your submission you indicate that the courts have decided, in relation to truth in political advertising, that they often have read that down to be the political process.

ANNE TWOMEY: Correct.

The CHAIR: I was wondering if you could comment on that, please.

ANNE TWOMEY: As you can understand, courts are very wary about being involved in trying to make decisions on highly politically contentious things about whether a political policy assertion is true or false. They

don't want to be involved in that. There was the case where the High Court did read down the relevant provision at the Commonwealth level so that it read that it only dealt with people who were misleading in relation to the process of the election itself—the process of voting, rather than broader issues about misleading and deceptive conduct. Yes, the High Court has done that in the past. If you didn't want the High Court to read it down, you would have to be very clear and express in your terms that it went beyond misleading statements about the electoral process itself.

The CHAIR: I think your paper has overwhelmed us. Thank you very much for coming here today, Professor. I personally found your paper very persuasive and the Committee, I'm sure, will consider it in great detail. Thank you very much. You'll be provided with a copy of the transcript of your evidence for corrections. Committee staff will also email any questions taken on notice from today and any supplementary questions from the Committee. Thank you very much for attending.

(The witness withdrew.)

Mr SEAMUS LEE, Registered Officer, The Greens NSW, affirmed and examined

Mr CHRIS MALTBY, Deputy Registered Officer, The Greens NSW, affirmed and examined

The CHAIR: I welcome our next witnesses. Thank you for appearing before the Committee today to give evidence. Please note that Committee staff will be taking photos and videos during the hearing. The photos and videos may be used on the Legislative Assembly social media pages. Please let the Committee staff know if you object to having photos and videos taken. Before we start, do you have any questions about the hearing process?

CHRIS MALTBY: No.

The CHAIR: Would either of you, or both, like to make a short opening statement before we begin questions?

CHRIS MALTBY: I think we may each say something short, briefly. The last session was very informative. In our submission we also, amongst many others, indicated our support for truth in advertising rules, although the difficulty for that may be beyond what we can hope to achieve. Perhaps the Federal Government may assist in some way with its disinformation legislation when that comes forward. One thing that doesn't seem to have been covered and has affected us in the past is a practice, which would be forbidden under the Trade Practices Act, of passing off—that is, parties and candidates handing out material that might mislead a voter into believing that it came from another political party, including the use of party logos, colours and so forth.

That is an area that could possibly be investigated. We didn't have that directly in our submission, but it occurred most recently to us in the by-election in Cook. There was a particular leaflet there that a naive reader might have assumed had come from The Greens but in fact wasn't. On the other hand, you might well argue that they were just accurately representing our policies and that was probably a good thing. We'll leave that to the voters. Nonetheless, it wasn't an official leaflet.

SEAMUS LEE: Also, as we've canvassed in our submission and as a number of others have canvassed, there needs to be some re-review of the electoral funding rules, donation caps, expenditure caps and other things. Some have pointed out that it can be slightly confusing. Also, since the Electoral Funding Act came into force, we've seen some changes at the Commonwealth level as well. That has changed, partly, the funding, but there is also now this concept of donations made for Federal purposes and other things. How that impacts on our State regulations is another significant aspect to be considered.

We now have a situation where we have Federal reimbursement and State reimbursement, but for local elections there's no public funding whatsoever. That's something that this Committee may want to inquire into separately. It is obviously an issue that means that, especially for local government, campaigns are just drawing from donations nowadays rather than other potential sources of funds. We also saw in some of the other submissions that there has been some discussion around the optional preferential nature of, particularly, the lower House in this State. That can cause harm and confusion but also there is some room to improve the situation.

CHRIS MALTBY: In addition to that, one of the things that does confuse voters is the differences between voting at State and Federal levels. Mr Raue raised some of those points in his submission. The upper House and the Senate are similar in many ways, but the requirements for voting are quite different. We've supported in our submission the idea that harmonising those two things would go a long way to improving the recognition of voters and the task of voters to understand what to do in voting in the different elections. In the

absence of constitutional change, which may be a good idea—and probably is a good idea, eventually—some direction could be given to the commission on wording about how to do the optional voting, to make it clear that there's more than just putting a "vote 1", and potentially on the outlawing of those sorts of signs that would mislead as to whether or not a "just vote 1" is all that is needed or might purport to be official, at least.

The Hon. CHRIS RATH: I take your point on the signage saying you only need to vote 1, but what about the flip side of that—if there was signage saying you must number every box, whereas you clearly don't need to number every box in an optional preferential election.

CHRIS MALTBY: Absolutely. I think that if you're going to do one, you've got to do the other. I think it's equally misleading. The Chamber, the Parliament and Australian democracy would agree that preferential voting is a good thing, whether or not—I know there are some who would prefer a first-past-the-post system, but we don't have that. Within the current rules it would be advisable, I think, for voters to be given the opportunity to maximise the power of their vote and not to be misled into thinking that that's not an option, as has been raised in some of the submissions.

SEAMUS LEE: I think it also comes down to a question about what instructions the commission staff are giving to the voter when they're issuing the ballot paper. Often the commissions will focus on what is the minimum requirement to cast a formal vote. If there was some additional wording or guidance suggesting that voters can actually do more than one, unless we go through a constitutional change that moves away from formal optional preferential to saying you've got to number a minimum of three or four—whatever it is; we don't have a particular view on that—if there was to be such a constitutional change, I think you've got to also make sure you get the savings provisions right, if you were to move away from optional preferential. People who are used to voting just 1—that would still be notionally a formal vote but that wouldn't be encouraged by the commission. There might be ways around that sort of thing.

The Hon. CHRIS RATH: The other issue you raised—which Ben Raue also raised, and which is an interesting idea that I am somewhat supportive of—is increasing the size of the Legislative Assembly. You've suggested to 99; it's currently at 93. What benefits do you think that would have, or what problems are we trying to fix in that case?

CHRIS MALTBY: We have some sympathy with the position of The Nationals on this, in that we now have some electorates in the west of the State which are beyond the capacity of anyone to adequately represent. But that's as far as it extends, I guess.

The Hon. SAM FARRAWAY: I suspect so.

Ms CATE FAEHRMANN: In terms of sympathy for the Nats, I'm glad you put that on the record.

The Hon. CHRIS RATH: Unholy alliance.

CHRIS MALTBY: Nonetheless, New South Wales electorates are now—it's a substantial job there. Mr Raue also pointed out the problem of rapidly growing areas in Western Sydney and other things. You're now seeing electorates with the sort of staffing—I mean, a Federal MP, who represents roughly twice the size of a New South Wales electorate, has four or five staff. I think a lower House member might have two or three. It's proportionate, perhaps, but there's certainly scope to do a better job with a larger House, and it would be more representative of the population as a whole. We also have supported and would still support the idea of moving to a proportional kind of system, similar to Tasmania.

Ms CATE FAEHRMANN: You indicated in your opening statement that you're suggesting changes to Legislative Council voting to align it with the Senate. The other recommendation you have, which would again be a constitutional change, is:

That the NSW Constitution Act be amended to replace the random sampling of ballots in surplus transfers with a method involving partial vote values (transfer values).

Can you explain that to the Committee, and why you're recommending that change?

CHRIS MALTBY: This is fairly arcane, this area. But the Senate's voting system—as I believe it still is—is not as fair as it could be in that when votes are transferred in a surplus, they all acquire the same transfer value at the time that they're distributed, regardless of the value they went into the count at. You tend to get a favouring of the ones that have come down a ticket, rather than ones that might have accrued from other places. It's actually fairly arcane, but the system that's been adopted in the lot for councils is the fairer system. That's the difference that we're identifying there: We should adopt the council system, the local government system, for the upper House.

Ms CATE FAEHRMANN: Which is—can you just explain?

CHRIS MALTBY: The votes decrease in value proportionally to the value that they had when they entered that stage of the count.

SEAMUS LEE: Of course, also, removing the random sampling means that every single paper transfers on during the count. At the moment we have a situation whereby if someone gets elected, we look at all the papers that are carrying on and the commission then takes at random, from all the piles that carry on to another candidate, enough to meet the transfer value to go on.

CHRIS MALTBY: To set aside a quota, essentially.

SEAMUS LEE: To set aside a quota. Whereas in the Senate, even though the weighting isn't perfect, all the papers go on at a particular weighting to the next candidate. So the actual vote values don't change, but it means that every single paper goes through. Obviously, the random sampling is kind of an arcane thing from back when computers weren't doing any of the counting for us. Obviously, these days, with the size of the ballot papers and everything, the computers help the commission do all the counting work.

Ms CATE FAEHRMANN: There are a number of submissions to this inquiry around electronic voting and iVoting. The next witnesses from the disability sector will be advocating for that quite strongly. What are you advocating here in relation to iVoting? What's the concern? Your submission has some recommendations around that. Have you got the submission in front of you?

CHRIS MALTBY: Not at the moment, but noting that online voting is inherently problematic in that anonymity and auditability are antithetical to each other. One of the ways to address that, which the commission has not done in the past, is to make the source code of these things open so that they can be independently verified. But having said that there are problems on the security side, you're in the balance against what's convenient and what assists people in the ability to vote. We've had as many as 5 per cent or 6 per cent of the population vote electronically in previous elections.

It was obviously a disaster at the last local government election, but previously it worked more or less well, though assurance is a question that remains open. Many of those people were overseas or in remote locations, where attendance at pre-poll or postal or other things would have been a challenge, so it did enable more people to participate than might otherwise have done so. Certainly, it's a guaranteed requirement for the disability sector that there should be something. I note that the blind submission and also the intellectually handicapped submission also noted that being able to access it online gives them more of an opportunity than being on the telephone, where it may be more confronting or may be more complicated, more hard to explain and with less confidence in the result—that what's gotten entered in on your behalf is, in fact, correct.

SEAMUS LEE: One of the things, of course, with online voting as well is, if my memory serves, in 2011 there was a big concern around the way the Legislative Council ballot paper was displayed online. I think Antony Green at the time—I think it was 2011 or maybe 2015, one of the two—pointed out that there was a high, disproportionate vote for columns on the left-hand side compared to all the other samples. One of those other things is that we have this process of randomising the ballot order, but then how that works in an online system can be sometimes a bit difficult to make elegant.

CHRIS MALTBY: So our general trend—we think that some system should be provided that meets those requirements as best they can for security and integrity.

Mr NATHAN HAGARTY: Just on public servants contesting State elections, I think your submission called it anachronistic that members of the public sector should take leave to run in an election. What's anachronistic about a clear conflict of interest?

CHRIS MALTBY: There's nothing anachronistic about that, but the question was—I think this provision arises from a time when the public service was much smaller and the positions were much more senior, generally, on average. Now that there are tens of thousands of public school teachers, for example, who have no ability to influence the decision-making of government and so forth through their work and are not subject to corrupting influences, potentially, from voters, it makes no sense that those people—I noticed one of the submissions was from a retired teacher who was also forbidden, because it was deemed to be an office of profit under the Crown to be receiving a State super pension. These things seem silly, but at some level in the public service there should be a ban on being able to contest elections. But for most of the ordinary positions, they're ordinary workers and ordinary citizens like everybody else. They have no particular advantage in the political process than any other worker. They should be enfranchised or given the same ability to contest elections as anybody else.

Mr TIM JAMES: Can I take you to page 4 of your submission, the table in which you seek to make out that The Greens aren't getting enough seats relative to the votes that you are receiving, and can I respectfully

put to you the proposition that that is largely because you're preferencing the Labor Party and so many Greens votes go to Labor, and all too often, of course, history records that it is The Greens that help to make a Labor Government. What's your response to that?

CHRIS MALTBY: First of all, I'd say that it's the voters who make those preference decisions, not us. We may recommend all sorts of things, and in past elections we haven't always recommended a preference for Labor.

Mr TIM JAMES: I think it's a pretty strong flow.

CHRIS MALTBY: In any case, I think Mr Raue dealt with that in his submission, or in his presentation. If you wanted more of the population in general to be represented by somebody they voted for, there would need to be more Greens in the lower House.

The Hon. CHRIS RATH: But if you had a proportional lower House, you would essentially never have a majority Government again. We haven't had a majority upper House since 1984, I think, or sometime then. You might think that's a good thing, but I'm just putting that you would agree, you would probably never have a majority Government.

SEAMUS LEE: And the last two Governments in this State are minority governments, so it's not an unheard-of thing. Tasmania, regularly now, is in minority. There was a short period there they were in majority, but then because two Liberals left the Tasmanian Government, they went into minority again and there are no significant issues. There were some agreement problems, but we also see New Zealand as well. Their Federal Government hasn't been a majority one party for years now since they went to their multi-member electoral system.

CHRIS MALTBY: Labour had a majority, I think, for a while there, but comes and goes. But I think you've hit the nail on the head. We don't see that as a problem. I think if you have a representative Parliament, it's job, if you have an Executive that has a lot of power, is it's held to account by both Houses of Parliament. There's no particular reason why the Government should not face particular scrutiny in the lower House just because it is expected to have a majority there.

The Hon. CHRIS RATH: I understand that if you have a unicameral system, you might have a single proportional representative Chamber, but in a bicameral system, you have a proportional upper House and either optional preferential or compulsory preferential single-member districts in the lower House. You're essentially saying it would be proportional upper House and proportional lower House. It is a question whether you would even bother having bicameralism at that point if you've just got the lower House then ends up just becoming another sort of House of review or proportional representative, no majority government-type scenario.

CHRIS MALTBY: To echo Mr Raue, of course, there is some advantage in having a local member and so having a Tasmanian-style system of four or five or seven members in this lower House district, you would still have a selection of local people who would be able to do the constituency work that you'd like. One advantage of the system which has not been canvassed, I think, is that it would also eliminate the disproportionate—or the difference between seats that are considered safe and marginal, because every seat would become a marginal seat because you'd always be contesting the last seat in a proportional system.

The kinds of political tactics we see used at elections where resources are focused on the marginal seats to the cost of the seats that are considered safe one way or another—you would see a more even level of campaigning because everybody would be campaigning for the last seat in all of those districts, which would be decided on a much smaller margin—that is, every seat would become marginal.

The Hon. BOB NANVA: I have perhaps a more mundane question that goes to organisational matters, but no less important. ICAC's Operation Aero concluded that there needed to be a link between minimum standards for party governance and the receipt of administrative funding from the Electoral Commission, and that is if you don't meet those basic standards of party governance you don't get taxpayer funding. We heard from ICAC's commissioner this morning as well, who confirmed that he would like to see that progress. Do The Greens have a perspective organisationally with respect to that?

SEAMUS LEE: I think we would notionally be supportive of something along those sorts of lines, but also we'd want to make sure that we don't overly prescribe one model of organising as well. The way The Greens organise would be different to Labor to Liberal to the Shooters, whoever. I think there is some usefulness for some kind of minimum standards. I'd also make the point that, at the moment, we have this senior office holders section within the Electoral Funding Act, so no political party can get either administrative funding or election campaign funding, or I think it's even up to the new policy fund or one of those funds, unless you provide a list of senior

office holders, and those senior office holders then have requirements on them that if they are aware of illegalities within the party or whatever, they are meant to report that to the commission.

There's a little bit of a requirement by putting some sort of like corporate directorship onto those people who are deemed to be senior office holders. But, obviously, what those minimum standards are and how that would be policed—obviously the commission is always very short of funds as well, and so you would need to make sure that you resource the commission appropriately to do whatever they do on top of their yearly audits and other things that go in.

CHRIS MALTBY: There's a deeper question here, too, which is that a political party is an entity of a kind but it's not well defined in law. There are a variety of structures that political parties use. I understand that Labor and Liberal are both unincorporated as the political entity is an unincorporated association. There are obviously lots of incorporated entities holding assets and all the things that are necessary, if you're going to have that sort of a structure. The Greens are an incorporated association that perhaps may have to reorganise as a cooperative because of the way the associations law works.

There are some parties that are organised as companies, but there's a sort of disconnect there between the legal structure of the political party as the law sees it and what the electoral law prescribes in relation to a party. When ICAC talks about the minimum standards of governance, I think this Committee could give some attention to the question of what framework does a political party need to have perhaps in terms of incorporation or other aspects to meet the minimum standards of governance that would be required.

The Hon. BOB NANVA: I suppose some of the things that the ICAC is looking at are more regular audits, grant disclosures, restructuring, the governing boards of parties so that they don't also include political management, but the greatest concern I've had previously is that the administrative burden of complying with electoral legislation is already fairly cumbersome. It takes a great deal of resourcing. Boosting those governance requirements would obviously take more resourcing, which is then a question of whether or not there is sufficient administrative funding being provided to political organisations. Do you have a view on that?

CHRIS MALTBY: On just the narrow question of just the auditing things, obviously as an incorporated body, we are required to—and beyond a certain threshold The Greens are required—submit audited accounts to the fair trading department as part of that business. We're already complying at that level. I'm not sure whether that's true of the other parties—Labor and Liberal—who don't have that structure and therefore are not subject to an auditing requirement presently. So, yes, there is an administrative burden. We are familiar with it.

SEAMUS LEE: Of course, in the most recent past, this Committee, I think, and the Parliament in general has gone through the process of—under the previous version of the Electoral Funding Act, all the claims and the disclosures used to be audited and signed off by an auditor. Obviously, that's now shifted to the Electoral Commission doing spot check audits and other things, using their forensic auditors and other things, to interrogate those disclosures. Of course, one of the things is that the State Electoral Commission only focuses on funds raised for State, local and then administrative purposes, and expenditures as well.

Obviously, there is a very large ability now that the Commonwealth has enacted the latest version of section 302CA that says that if someone was to donate money for a Federal purpose—i.e. running in a Federal election or whatever—that is then exempted from any State legislation, using the Commonwealth constitutional powers to override State legislation as needed, as long as the money stays in there and is only spent on the Federal purpose. That also creates a notional workaround. Let's say you have a property developer that wants to give The Greens money. It's a ridiculous scenario.

Ms CATE FAEHRMANN: That wouldn't happen. Use Labor as an example.

SEAMUS LEE: Labor, Liberal—whoever. They could give that money to that party for the purposes of a Federal campaign. That would then free up money that that party got from their AEC return to then be spent on the State or local election because that's an obvious, clean source of funds. It doesn't mean that the developer has necessarily donated legally to State or local, but it's a way around the current laws. I was also interested in listening to the ICAC commissioner, and obviously there are other aspects in terms of good governance as well.

If they extended to local government, one of the things might be that, as a councillor, you may not necessarily feel conflicted if someone has given money to the political party that you're a member of, not necessarily for your campaign but just generally or something, and now they are putting a development application in. You may not necessarily feel that that's a conflict of interest because it's not about you personally receiving money; your party has received the money. I think we need to look at how that works as well, if we're extending to local government, obviously.

Ms CATE FAEHRMANN: Part of the submission relates to behaviour and some not great incidents at polling booths. I note that you have three recommendations around how to make polling booths a bit safer for workers. You have a couple of recommendations around that. Would one of you care to comment on that and talk to your recommendations?

SEAMUS LEE: I'm sorry, I haven't looked at the submission.

Ms CATE FAEHRMANN: It says:

A number of our volunteers and candidates suffered significant verbal abuse and even assault by booth workers for other political parties.

One of your recommendation states:

The NSWEC invest in an online incident reporting system for the reporting and effective management of incidents ...

Another recommendation states:

... polling officials receive adequate training to correctly respond to questions from voters ...

That is including voters who might not know about the particular incidents but just generally, because it happens every election.

SEAMUS LEE: There are always going to be some potential scuffles around polling booths. I think we've all been there, whether it's about where people can stand or not, what the six-metre rule is and other things. Every polling official makes up their own site determination on what that means. Having more standardised training helps in that sense. Also, thankfully, we have not really had much violence. There was one incident about 10 years ago, I think, at a council by-election where a candidate and the local mayor decided to get on with it, and that led to an ambulance being called. But the commission's viewpoint was that it was outside the physical polling booth and so it wasn't theirs to deal with. I think it also leads into the question of real estate at polling places.

I know that there's been some tension between different political actors as well, like the number of signs, how big those signs are and how much space. That can sometimes cause a bit of argy-bargy between different political groupings. I know that there has been a change in Victoria in particular that says that campaigns are now limited to, I think, two posters for every lower House candidate and two for an upper House campaign at a polling place. That is potentially a bit drastic, but it might help alleviate some of the issues. The commission has moved to a much more active role. In the last State election, I remember seeing investigative teams going out from the commission when there was a complaint made, so it seems like their systems are improving. But, obviously, the more that people who report incidents can find out where the investigations are up to from the commission is always helpful as well.

The CHAIR: Unfortunately, we are out of time. I didn't get to ask my question about postal votes, so I will send it to you. Thank you for appearing before us today. You will be provided with a copy of the transcript of your evidence for corrections. Committee staff will also email any questions taken on notice from today and any supplementary questions from the Committee. Thank you again for appearing.

(The witnesses withdrew.)

Dr VANESSA TEAGUE, affirmed and examined

The CHAIR: Dr Teague, nice to see you again. Thank you for appearing. Please note that committee staff will be taking photos and videos during the hearing. The photos and videos may be used on the Legislative Assembly social media pages. Please let committee staff know if you object to having photos and videos taken. Before we start, do you have any questions about the hearing process?

VANESSA TEAGUE: No.

The CHAIR: Would you like to make a short opening statement before we begin with the questions?

VANESSA TEAGUE: Yes. Hello, everyone. I've been here lots of times before and I am going to say more or less the same thing again. I will be brief. I am a cryptographer by training and I take a broad interest in all sorts of matters related to computers and elections, but specifically the secrecy of the votes and the integrity of the process. My colleagues and I did a lot of work examining the security of the iVote system, but I won't labour that too much today because I think that's probably old news. If you want to ask me about it, you're very welcome.

I have three main things to say. The first thing is that I think the election technology debate in New South Wales has been framed in this very restrictive fashion, as if it's iVote and that's the only way to meet the democratic needs of voters with disabilities, or it's nothing. I think that framing is very wrong for two reasons. First of all,

iVote is not an adequate way for anybody to vote. Secondly, there are actually lots of other better designs that should be seriously considered: for example, putting a computer in a polling place and getting it to print out a paper ballot that the person can see, which can then be put into the normal scrutineering process with everybody else. There have been kiosk votes in the past in New South Wales, but it was an iVote in the kiosk. The voter would go to the trouble of coming in to vote in person and then get all of the security and privacy and integrity properties of an internet vote. That's the worst of all possible worlds. There are much better designs. Ask me as much about that as you like.

The second thing is that I actually agree with the NSW Electoral Commission on one important matter. I'm reading the *Technology assisted voting* final review report and they are talking about fixing up the Legislative Council count algorithm. I think everybody agrees that that would be a good idea. I understand that it's apparently a constitutional rather than a legislative issue. I encourage you to keep that in your minds if New South Wales happens to be running a referendum any time soon. Changing the Legislative Council algorithm from a randomised algorithm to a deterministic one is a very good idea for a wide variety of reasons.

The third issue—please stop me if this is too much detail for my two-minute introduction—is there was this very significant issue that arose in the Supreme Court hearing about the failures of the local government elections that related to this question of how you can tell whether a certain number of disenfranchised voters constitutes a possible material impact on the election. In other words, we think we unfairly disenfranchised a certain number of people. Here is our apparent election outcome. How do we know whether disenfranchising that many people made a difference to the eventual outcome of the election? In the United States, where they are using a very simple electoral system, it's very obvious. If Alice beat Bob by 50 votes and fewer than 50 people were excluded, then it definitely didn't make a difference. If more than 50 people are excluded, it possibly did make a difference. It is very straightforward. For the single-member preferential voting that we use in our legislative assemblies, it's actually fairly easy to calculate, even though it's not immediately obvious.

For STV counts where there are multiple members being elected at once, it's incredibly complicated. If you obsess about these things, you might remember the Western Australian Senate issue that occurred in 2013. One of the losing candidates was able to show that in the many, many rounds of eliminations and quota redistributions that eventually led to the result, if they went back about six or seven steps from the end and eliminated somebody else instead, then that cascaded into actually two different people getting elected. So STV has this strange behaviour that's quite hard to characterise, and the problem that the NSW Supreme Court was facing in the case of the local council elections—"We think we excluded this many people. Did it make a difference to these election outcomes?"—is a non-obvious problem to answer.

So my colleagues and I, particularly Andrew Conway, have written a whole lot of software-based analysis to try to answer this question. We don't have perfect answers, but we do have very extensive heuristics for finding small solutions to the problem. We analysed the local council elections and found that there were 39 councils for which the number of people that the NSW Electoral Commission counted as having been excluded was more than the number sufficient to change the outcome. The reason this is relevant is that in the Electoral Commission's technology-assisted voting paper final review report, they say that it's very, very uncommon for voter disenfranchisement to have a material impact on the election. On around about page 58 of their long recommendation they make the following recommendation. They say, essentially, that it is appropriate and proportionate for an election not to be invalid on the basis that technology-assisted voting was not available.

For other contests, including Legislative Assembly contests—a savings provision is what they are calling it—an exclusion from the Court of Disputed Returns protection may be appropriate even if votes cast by technology-assisted voting cannot be verified or counted but only if the Electoral Commissioner determines prior to the declaration of votes that the number of votes cast by technology-voting in that election was greater than the smallest exclusion point.

In other words, they are saying, "We never want to have to go to the Supreme Court because of an iVote failure again. We want you to change the legislation so that if some disaster like that befalls again, those voters who were disenfranchised by that process are specifically excluded." Do I need to explain why I think that's a terrible idea, or shall I pause there and invite further questions?

The Hon. CHRIS RATH: I think it is self-evident.

VANESSA TEAGUE: In that case, I'm done with my summary.

The Hon. SAM FARRAWAY: Thank you, Doctor, for appearing today. In your opening remarks you touched on having the option of providing more computerised assistance to voters with disabilities. You spoke about the printer and, obviously, being able to print out a ballot paper for someone needing that. Can you elaborate on how you see that actually working on polling day or in an early voting centre? Practically, how does that work?

VANESSA TEAGUE: This is a fairly common solution in the United States for voters with disabilities. Obviously, there are a few slightly different ways that it could work, but there are a few things to say. First of all,

the computer doesn't need to be connected to the internet at all. It can be a totally free-standing—effectively, an assistive device that acts like an expensive pencil to assist those people who are not able to put their own pencil onto their own piece of paper. That's one model. The idea then would be that there would have to be some kind of mechanical assistance for printing out the ballot and, if you are not able to pick up your own ballot and look at it and fold it up and put in a box, there would have to be some kind of mechanical assistance for that. There are places in the United States that make that happen. It's a thing that has to be engineered with some care, but it's not an impossible thing to do. It's a thing that is done in plenty of other places.

The idea would be that it would provide two really important properties. Number one, it would provide verification. I understand this does not work for people who cannot see at all but, for people with other disabilities who do have the opportunity to look at their ballot, it gives them the opportunity to verify directly that the ballot is what they wanted. Secondly, it can have much better privacy properties than voting over the internet. The person can be voting inside a private booth where they are isolated from the influence of others, and the computer can be disconnected from the internet, as I said.

The Hon. SAM FARRAWAY: Obviously, if the computer is not connected to the internet, that removes the risk of being hacked.

VANESSA TEAGUE: It removes some of the risks.

The Hon. SAM FARRAWAY: But in terms of practically rolling that out operationally on the ground, where do you see the risks, or what measures would have to be in place to keep integrity of the voting system and that ballot?

VANESSA TEAGUE: There are definitely still risks. Just because a computer is not connected to the internet doesn't mean it can't be attacked. It means it can't be attacked remotely, but it doesn't mean that it can't be fiddled with in the warehouse before it goes out to the floor, or it doesn't mean it can't accidentally be connected to the internet when it isn't supposed to be. It doesn't remove the risk that the computer might not behave in the way it's supposed to. It's probably not an appropriate voting method for people who do not need it. The fact that people can check their paper doesn't automatically or necessarily mean that they will or that they will do it diligently or that they will notice mistakes.

There has been some research in the United States on the American style of voting, in which people are choosing a lot of different contests at once, that shows people do not necessarily notice if the printout is not what they asked for. So that's another risk. There's a risk, if the mechanical part is not well designed, that other people in the polling place might be able to see the vote, and that obviously has to be a thing that's designed into the process, if it's done. So it's not that there are no risks; it is that it is a substantially better process than voting over the internet.

The Hon. SAM FARRAWAY: At the end of your submission you say:

There are numerous other opportunities for reform, allowing NSW to benefit from the improved speed and convenience of computers without ... electoral failure ...

Is there anything else you want to add around further reform that you see could be achievable or possible without losing the integrity of our democratic voting system?

VANESSA TEAGUE: Another good possibility which has recently been enacted in Federal legislation for the Senate is that when the Legislative Council papers are scanned, there should be an audit process to verify that the digital ballots match the paper. In other words—forget about electronic voting at the moment; assume that people are writing on a piece of paper. They write their vote on a piece of paper. There's a scanning step in which the piece of paper goes through some—I don't know whether in New South Wales it's a human typing or whether it's automated number interpretation by a scanner and a computer. Then that produces an electronic record of each vote and then that gets counted.

The Australian Parliament, just before the last Federal election, passed legislation to say that the Australian Electoral Commission has to conduct an audit to validate the output votes that get counted against the paper ballots that they are supposed to reflect, and they have to pick a certain number of them. Unfortunately, the legislation does say not say they have to pick them at random but, if you write equivalent legislation, you should make sure to include that. They have to pick a certain number of ballots and then they have to compare the paper ballot against the digital representation and keep a record of any inaccuracies that they find.

The Hon. CHRIS RATH: What about electronic mark off? I don't know if you've looked at this before. I'm not talking about electronic voting, voter ID or any of those more controversial issues, but simply that—to reduce human error—you would have a system using a computer with an electoral staff member to mark names off from voting. When we've asked the Electoral Commission before why there are cases of double or multiple

voting, it's often older voters with, potentially, dementia who voted via a postal ballot or pre-poll. Then, on the day, their children come over and say, "Mum, we've got to go and vote" and they go and vote a second time. It obviously would then be picked up weeks later when the Electoral Commission do their audit, but it could be picked up immediately if you had electronic mark off. Is that something you have looked at or, obviously, there are some benefits to it?

VANESSA TEAGUE: I haven't done research on it specifically. I think it's fine idea. The reason that that's actually a good use of technology in electoral processes is that you can design it so that the fallbacks are pretty sensible. You definitely don't want the American situation where—sorry, I shouldn't say that in such a generalist way. You definitely don't want the situation that sometimes can arise in some other not so well-administered democracies, in which a person walks into the polling place and the officer says, "No, sorry. The computer says you can't vote. Go home." We don't want that, but I think there's plenty of opportunity to design the process so that it prevents the kinds of issues you are referring to without disenfranchising people.

The Hon. CHRIS RATH: You could start a declaration vote process as part of the—

VANESSA TEAGUE: Correct. Something intelligent like that, or maybe you make it compulsory to have a print-out in case the computers all go down. I don't know the exact detail, but there have been some failures where the electronic mark-off system went down and suddenly nobody could start voting. You definitely want to design the system to have intelligent fallbacks. But I don't see any particular problem with doing that as long as it's designed properly.

The Hon. ROBERT BORSAK: Your evidence is always great. I, like you—and, I think, others on this Committee—have got a fair amount of scepticism about iVote. In fact, your evidence has managed, over a period of time, to stop that thing from taking control and, in my view, messing up the voting system of New South Wales. I know you have given evidence on this in the past but is there a computerised voting system that could ever be trusted to be of use, especially in light of the evidence we heard from Mr Green this morning. He's saying, perhaps 20 years from now, we might not even be able to get the forms printed on time that we need to do for manual ballots.

VANESSA TEAGUE: I missed Antony Green this morning.

Ms CATE FAEHRMANN: It's getting harder and harder to get the paper and the size, because of reduced paper use broadly, was his evidence.

The Hon. ROBERT BORSAK: Yes. That's what he was talking about.

Mr STEPHEN BALI: It's also the size of the paper. The printing machine is a specialised machine and there's only one major company.

The Hon. ROBERT BORSAK: Just simply looking at the volume of paper and the lead times that we've allowed ourselves in legislation to get things done.

VANESSA TEAGUE: First of all, I know that Antony Green is a geek. He knows a whole lot of details about electoral processes. But he doesn't know anything about computer security. I think, because he's the guru in one field, people pay a lot of attention to him when he's going on about electronic voting. He actually doesn't know anything about security, cryptography, verification or any of the privacy or important issues that are relevant here. I don't know anything about paper. Could we not print it on two A4 pieces of paper instead of throwing the democratic process away? Either we could print a couple of different standardised-sized pieces of paper, or we could throw away the integrity of the political process.

The Hon. ROBERT BORSAK: Just getting back to computerised systems—

VANESSA TEAGUE: Yes. Are there better systems?

The Hon. ROBERT BORSAK: In America, they have poker machine-type things with hanging chads—

VANESSA TEAGUE: They do. I think they've mostly got rid of them now.

The Hon. ROBERT BORSAK: Yes. They used to.

VANESSA TEAGUE: There are good ways of using computers in the electoral processes, but none of them get rid of paper. Like I said, there are plenty of systems where, for a voter with disabilities, the system will print out a paper record that the person can check. There are other systems. This is probably the most common thing in the US: The person will fill in the ballot and then they'll take to it a scanner and get it scanned in real time, and it can tell them if they've voted in an invalid way, or whatever. Then, obviously, the polling place retains the piece of paper for audits, but it will often count from the electronic record. So that can be quite fast, but also—

The Hon. ROBERT BORSAK: So that's what you mean by electronic audit coming up after the event? Is that what you're saying?

VANESSA TEAGUE: Yes.

The Hon. ROBERT BORSAK: A black box approach to the software, of course, means there's no scrutineering that can be done.

VANESSA TEAGUE: Yes. And that is bad.

The Hon. ROBERT BORSAK: For example, the way iVote just can't be extended anywhere—or software like it.

VANESSA TEAGUE: That's what I think. This aspect that we have designed into our paper processes in which the voter can see how they voted—everybody standing around in the polling place can see everybody put one piece of paper into the box and then all the scrutineers can watch the count afterwards. That process may not be absolutely perfect, but it's a really well-designed process that makes it extremely hard to cheat and it gives everybody evidence after the fact that it was extremely hard to cheat. I know that postal voting already, to some extent, undermines that. I think it's unfortunate. But I think we can use computers intelligently as long as we don't lose sight of the idea that it's actually the observation, verification and transparency of the process that's critically important.

The Hon. ROBERT BORSAK: You mentioned postal voting. What proportion of postal votes would actually allow people to believe that the vote wasn't fair? Because postal votes were never designed to be doing what they did, for example, in the last United States presidential election.

VANESSA TEAGUE: Yes. I think that's probably fair. I don't know statistics about Australia. You probably know we have had at least one case of—

The Hon. ROBERT BORSAK: Yes, we have here too. New South Wales had one.

VANESSA TEAGUE: So I agree: Postal voting isn't great for approximately the same reason that internet voting's not great, only in internet voting those reasons can be implemented faster.

Ms CATE FAEHRMANN: Thanks for your evidence today, and over the years, to this Committee. You are aware, of course, that the next witnesses that we have after lunch are from the disability sector. Vision Australia, for example, says in its submission that it's encouraged that in the 2027 election there's going to be—small-scale they call it—internet voting for voters who are blind or have low vision. What's your view on the ability or capacity of small-scale voting to be safe? I assume I know what that answer is, but then what alternatives are there for people who want to vote potentially via computer, who are at home and can't get to the polling booth? Do you have any suggestions for that?

VANESSA TEAGUE: Honestly, I do not have a suggestion for people who cannot get to the polling booth. I acknowledge that I don't have a good suggestion there. I do think that for people who can go to the polling booth, computerised assistance, as I've described, is a much better solution than voting over the internet. I really want to say I don't in any way see this as like a debate between the security community and the disability advocates. I absolutely agree that any society that calls itself a democracy needs to make adequate provision for people with disabilities to vote. I think the thing that upsets me is that the disability community has been told that this system is satisfying their democratic rights, and it really just isn't.

When it crashed, it was obvious that it was disenfranchising people. But I think that community has been told that it had very strong privacy properties, very strong security properties and so forth. It never did. It never actually did. That was never true. Particularly this notion of independence, which is so important. I understand why it's important. If you actually think about it, voting over the internet is critically dependent on the foreign company that wrote the software, the people who host the servers, and the Electoral Commissioner who designed the processes. It's not independent. It's dependent on a whole series of people, companies and processes to function correctly, and if they stuff up, your vote might be exposed or altered. I think the mindset is mistaken. I think the aspirations are absolutely to be respected. But the mindset is wrong. It would be better to provide a higher integrity solution in the polling place that admittedly did not meet the needs of absolutely everybody, than to fob everybody off with a system which is not actually meeting their rights.

The CHAIR: I think that you have convinced us all. Is there anything finally that you would like to add?

VANESSA TEAGUE: No.

The CHAIR: I know I speak for all of the Committee when I thank you for your expertise and for coming here today. Thank you very much as always for your invaluable evidence.

VANESSA TEAGUE: If anyone thinks of any other questions, I am happy to—

Ms CATE FAEHRMANN: I have just one thing. You mentioned in your opening statement about the review and your analysis. Has that been submitted to this Committee before?

VANESSA TEAGUE: No, sorry. It was not submitted officially to the Committee.

Ms CATE FAEHRMANN: It would be useful to get more of that information, if possible.

The CHAIR: Could we obtain a copy of that?

VANESSA TEAGUE: This is on the NSW Electoral Commission website. I can send it to you but maybe it is more appropriate if you ask them for it as it is their review of technology-assisted voting.

The CHAIR: We are doing a separate inquiry into that.

Ms CATE FAEHRMANN: Yes, of course.

The CHAIR: Thank you. We appreciate your time. You will be provided with a copy of the transcript of your evidence for corrections. Committee staff will also email any questions taken on notice—although I do not think that any were today—and any supplementary questions from the Committee.

(The witness withdrew.)

(Luncheon adjournment)

Mr BRUCE MAGUIRE, Lead Policy Advisor, Vision Australia, before the Committee via videoconference, affirmed and examined

Mr JACKSON REYNOLDS-RYAN, Policy and Advocacy Manager, Blind Citizens Australia, before the Committee via videoconference, affirmed and examined

Mr JAMES SIMPSON, Senior Advocate, Council for Intellectual Disability, affirmed and examined

Ms JOANNE YATES, Acting Deputy Chief Executive Officer, People with Disability Australia, affirmed and examined

The CHAIR: I welcome our next witnesses. Thank you for appearing before the Committee today to give evidence. Please note that committee staff will be taking photos and videos during the hearing. The photos and videos may be used on the Legislative Assembly social media pages. Please let committee staff know if you object to having photos and videos taken. Would any of you like to make a short opening statement before we begin questions?

JAMES SIMPSON: The Council for Intellectual Disability, for those members who might not be aware, have been around for nearly 70 years. We started out as a confederation of non-government service providers in the intellectual disability field. We have evolved over time to now being led by people with intellectual disability—the majority of our board are people with intellectual disability, and also right through our staff. There are then some people, such as myself, who assist as well. Shannon Lalor, one of our advocacy group members with intellectual disability, unfortunately gives his apologies for today. For people with intellectual disability, the key issue about elections is cognitive access.

There have been appropriately recognised issues for a long time around physical access in all sorts of contexts and sensory access for people with sight or hearing impairments. What has perhaps tended to have been less recognised over time is cognitive access—the assistance people need who have intellectual disability, dementia or other such disabilities—to be able to participate in various areas of life, including in the electoral process. We have been pleased to be on advisory committees for both the Commonwealth and New South Wales electoral commissions, pressing those issues for the last seven years or more.

Briefly, the kinds of cognitive access issues that need to be addressed is the provision of information in an accessible format—Easy Read, as it is called—which has the really important information in very plain English with pictorial accompaniment to the written information. Technology needs to be designed in a way that makes it easy to use for people with cognitive disability. Things like government websites, for example, tend to be extremely hard to navigate. Support is another really important thing. To give an illustration, the NSW Electoral

Commission has good procedures in place about how a person with cognitive disability can have a support person come with them to help them when they are voting, and electoral staff are allowed to do that as well.

But the awareness of that across electoral officers is by no means uniform. If Shannon had been here today, he would have told you about his experience at a recent election where he was refused to have a support person with him. He found that extremely anxiety provoking. A number of times, he filled out his ballot incorrectly and had to go back and get a replacement. The awareness of electoral officials about their own processes is very important. Acting on these issues is very much consistent with electoral commitments made by the current Government. Before the State election, we had a campaign called the "Everyday for Everyone" campaign, which was about everyday things, like accessing government information, being available to people with intellectual disability.

The incoming Government made a commitment, which they are in the process of implementing, to ensure that Easy Read information is available in relation to all relevant New South Wales government information. That very much ties in with the kinds of further action we would like to see by the Electoral Commission—not to deny for a moment that the Electoral Commission had not already taken some useful steps down that path. One final thing is the inclusion on the roll. Historically, people with intellectual disability tended to be out of sight and out of mind and disqualified from being able to vote under archaic laws.

Those laws were changed in New South Wales in 2017 to the Parliament's great credit. We fear that there would still be a lot of people with intellectual disability not on the roll, either because of a lack of community awareness about the fact that they can be or because the Commonwealth legislation still anachronistically prohibits from being on the roll people of "unsound mind", as it is pejoratively expressed. With the Commonwealth, as we understand it, being the primary keeper of the electoral roll, we fear that then translates into people not being allowed to be on the roll in New South Wales when they should be.

JOANNE YATES: People with Disability Australia welcomes the opportunity to appear before you today. We are also an organisation that has been running for over 40 years and we are described as the disability representative organisation. That means the governance of our organisation is filled with people of lived experience with disability, and the majority of our staff are also people with disability. The rest of us work as allies and technical experts to support the work of the organisation. We reconfirm the content of our submission recommendations that the NSW Electoral Commission work with the disability community to ensure that by the New South Wales State election, to be held in 2027, a suitable replacement of the iVote system is reinstated for voters who are blind or have low vision, and that general accessibility improvements are made to polling places and to election collateral that allow all people with disability to exercise their right to vote.

We encourage the NSW Electoral Commission to learn from successful trials in other jurisdictions that have examined ways to improve the voting experience for people with psychosocial disability in particular. This might be as simple as electoral staff wearing and being trained to notice the sunflower lanyards and wristbands often used by people with psychosocial disability. We also encourage the commission to recruit and train electoral and polling place volunteers who are trained to better recognise voters who need assistance so that the ability of electoral staff to provide that assistance ensures all votes submitted have their integrity upheld. We believe that more polling places must be physically accessible, including for rideshare and taxi drop-off points in close proximity to all polling places. Finally, telephone voting should be made available for all people with disability who need it. Currently, it's reserved for people who are blind or have low vision, with the service operating for the same time as pre-polling and all-day polling on election day. Thank you for this opportunity.

BRUCE MAGUIRE: Thank you for inviting us to give evidence to the Committee this afternoon. Vision Australia is the largest provider of services to people who are blind or have low vision across Australia. We support more than 26,000 clients each year through a wide range of services. They include library and information, occupational therapy, orientation and mobility, and seeing eye dogs. We work collaboratively with other organisations in the blindness and low-vision sector to best represent the needs and interests of people who are blind or have low vision. I begin by referring to the final report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. The commissioners articulate an inspiring vision of an Australia that is truly inclusive of people with disabilities. I quote:

... a future where:

- people with disability live free from violence, abuse, neglect and exploitation
- human rights are protected
- individuals live with dignity, equality and respect, can take risks, and develop and fulfil their potential.

This vision will never be achieved unless a positive duty to eliminate discrimination is incorporated into all areas of society. The commission explains:

Achieving substantive equality requires more than making adjustments for one person. Positive action is required to remove systemic barriers. It means shifting the focus from a reactive model to one of preventing and eliminating systemic barriers for people with disability more broadly.

It goes without saying that inclusive electoral practices are integral to the operation of a democratic society that values inclusion of people with a disability. As such, governments and electoral commissions must play their part in creating a more accessible, equal and inclusive society. They must be seen, and see themselves, as being impelled by a positive duty to remove systemic barriers—a duty that must encompass every aspect of the way electoral processes operate. As we discuss in our submission, the New South Wales 2023 election was a roadblock on the journey towards achieving the equal, discrimination-free society that the disability royal commission envisions.

The dumping of the iVote platform took away the ability of people who are blind or have low vision to cast an independent, secret and verifiable vote. For younger voters, it was their first experience of having to disclose their vote to someone else, while for others it was an unpleasant reminder that we have a long way to go before equality and independence can be taken for granted. The one encouraging aspect of the 2023 election for us was the commitment demonstrated by the NSW Electoral Commission to making sure that the operator-assisted telephone voting service was easy to use and widely promoted. There will always be voters who, for a variety of reasons, prefer to use this method of voting, even though it does not in and of itself provide true independence, secrecy and verifiability.

Telephone voting was one of the three options that comprised the iVote suite, and in our view it must always be maintained. We also congratulate the commission on their initiative in conducting the review of technology-assisted voting. We support the key recommendations from the report of this review, especially that there be a limited trial of technology-assisted voting for eligible voters in the 2027 election. The disability royal commission did not produce a business-as-usual vision. It did not suggest that we remain complacent by doing the things we've always done. We cannot bring about the vision of a fully inclusive society unless we embrace radical change and enthusiastic commitment—all of us, every day, everywhere.

The final report of the commission has created a point of inflection for Australia. If we fail to seize the opportunity to make our society fully inclusive, the only direction we can go is backwards. We therefore urge the Committee to make recommendations that not only acknowledge that the 2023 election was a backward step for equality and independence but also recognise the disability royal commission's inclusive vision. Any replacement of the iVote platform, even on a limited trial basis, will fall apart—just as iVote did—if the NSW Electoral Commission is not given sufficient resources to develop, test, maintain and promote it. The blind and low-vision community is asking for a secret, independent and verifiable vote for the 2027 election, and all elections thereafter. Even if it requires some radical change, it will bring us closer to that inclusive vision that we all share.

JACKSON REYNOLDS-RYAN: Firstly, just a note about Blind Citizens Australia. We are the peak national representative organisation of and for the over 500,000 people in Australia who are blind or vision impaired. We've been operating for nearly 50 years, and we empower Australians who are blind or vision impaired to lead a full and active life and to make meaningful contributions. Like people with disabilities, we are disability led. Our work is directly informed by the lived experience of staff, volunteers and activists within the organisation, and all directors are full members of BCA and have lived experience. The majority of our volunteers and staff are blind or vision impaired, and those of us who are not work as allies to that group.

I want to echo what a lot of my colleague Bruce from Vision Australia has just outlined. We work closely with Vision Australia and other organisations in the blind and low-vision space, especially on this very important issue of equal participation in the political process. We note that Australia was the first country in the world to allow citizens to cast their vote anonymously. That was taken up by the rest of the world and is now considered the central tenet of a free and thriving democracy.

In recent years there have been international agreements around civil and political rights, as well as the rights of persons with disability, both of which underpin that principle of a free and secret vote, ensuring that people with disability can enjoy the same political rights on an equal basis as those without disability. However, as my colleagues have already indicated, we note that the 2023 election was a backward step. We acknowledge that this was a very difficult situation for the electoral commission to find itself in, and we are aware of the very significant concerns around the security of that election and the very technical concerns about its ability to handle an election. However, this had a very real impact on people who are blind or vision impaired.

We note also that New South Wales has been a nation leader in Australia in ensuring that people who are blind or vision impaired—and disability more generally—do have access to accessible methods of voting. The iVote system led Australia and was for many years considered the gold standard. We firstly commend the NSW Electoral Commission. While we were disappointed with their decision to not continue the iVote system in the most recent election, we do commend them on their subsequent work in running the technology-assisted voting

review and their final report of that. It is worth noting that in the most recent election, as my colleague Bruce noted, for many people, given that iVote operated for about a decade, this was a radical departure. One member that we spoke to in our consultations summed up that they're feeling that "Voting in New South Wales elections, unlike Federal elections, has always made me feel empowered by giving me the opportunity to complete a truly secret ballot. To have that taken away is just gut wrenching."

In our consultations, we noted the difficulty that that then presented for people who are blind or vision impaired. On one level, they were divided in their approach. Some members explained that if they were going to have to tell someone how they were going to have to vote, they'd rather tell a trusted family member or friend and get their help in filling out the ballot in person at a voting centre rather than telling an unknown, disembodied election worker over the phone. On the other hand, others shared their anxiety that because of personal circumstances, political differences with family members and the like they didn't feel that that was an appropriate or sometimes even safe option for them. They would reluctantly use the phone voting service.

It's worth just mentioning there the different types of phone voting services. It is clear that the current method of human-assisted telephone voting does not enable voters who are blind or vision impaired to cast their votes independently because that human assistance is required. With iVote, voters were able to vote at their own pace, using options that were most suited their accessibility. With telephone voting or human-assisted telephone voting, people must disclose it to another person. While we acknowledge that the electoral staffer who is completing that ballot paper on the other end of the phone cannot personally identify that voter, the experience for that voter is still one of disclosing their vote to another. There's no way of them verifying that their vote has been recorded in the way that they intended, which was an important part of the iVote system.

I'll just note that we also commend the Electoral Commission in their final report of the technology-assisted voting inquiry on their recommendations that we take this as an opportunity to improve not just New South Wales voting accessibility but to start a process of improving accessibility across the nation. We believe that that should happen—that electoral commissions should work together across State, Territory and Federal jurisdictions to allow for a national approach that allows different jurisdictions to pool resources, combine learnings as well as more opportunities for testing as different elections roll out. We think that there would also be benefit for the cybersecurity expertise that would be available at a Commonwealth level. However, we don't want that to stand in the way of New South Wales reclaiming its role as a nation leader in this space, and we ask that the New South Wales Parliament and Government take steps to give the Electoral Commission the powers that they need to make the recommendations of their report possible. I think I'll leave it there for now.

The CHAIR: If you have any additional information that you wish to read out, could you maybe table that? We'll look at incorporating that.

Mr TIM JAMES: Thank you all as individuals and to your organisations and communities for your contributions and for being with us today. I think I'd want to start by saying that we are sorry. Our system, our democracy clearly at the 2023 election went backwards insofar as access, independence, secrecy and confidence, inclusion, and equality. It is regrettable. I'm sure I speak on behalf of all of us in saying that we are sorry that it was not where it needed to be. You can't help but think that we've let people down. That's never desirable and always regrettable. But, looking ahead, bearing in mind that we have the Electoral Commission with us in a little while, what is your current understanding of how this is to be rectified, the commitment going forward? Do you expect iVote or an equivalent to be back for the 2027 election? How confident are you that we will have fixed what was obviously in so many ways a blight upon our democracy and electoral system?

The CHAIR: I think that question is directed at everyone but can I ask people to be as concise as they can, please. Who'd like to begin?

BRUCE MAGUIRE: I'll open the batting. Our understanding is that the commission is or has submitted a tender process to see what the market has to offer in terms of a replacement for the functionality of iVote. In our view, that should be operator-assisted telephone voting plus automated telephone voting where you use the keypad on your telephone to select candidates and, of course, internet voting. Having those three components is really, really critical from our point of view because the community is diverse and there's no one component that's going to meet everyone's needs. That's our understanding of where the process is at. It will depend a bit on how the market responds as to what the next steps are.

JAMES SIMPSON: I'd just like to add that from the point of view of people with intellectual disability, it's really important that whatever technology might be designed is designed with cognitive access included involving user testing and design involvement of people with intellectual disability. All too often we see technologies of all sorts of kinds being quite befuddling to all of us, let alone those who, because of their cognition, find it a bit harder to use it. We're ready to help.

JOANNE YATES: We would endorse those views and just further add that while the Electoral Commission is going to market and have suggested that they're keen to work with industry they continue to hold working groups and engage with the disability community more broadly. We would, as Jim has suggested, absolutely love to work in co-design to come up with a solution that makes the voting system accessible to all types of people with cross-disability experience. This is our one true platform of democracy and, for those people that feel like they're left out of it, this is a really very unique circumstance to improve that accessibility. We absolutely encourage co-design.

The CHAIR: Mr Reynolds-Ryan, do you have anything to add?

JACKSON REYNOLDS-RYAN: Not a lot. I echo those statements but just highlighting the importance that it's not just about the design but it's also about the maintenance of any future system. That was one of the big problems with iVote. From what we can tell, there wasn't the appropriate resources to maintain it as a fit-for-purpose system and that's why it ultimately failed. We don't want that to happen again. Co-designing in the development and implementation process is vital but then so is ongoing maintenance and testing with the community.

Mrs SALLY QUINNELL: A couple of the other submissions have included reference to limiting the advertising material or the material outside of pre-poll and on election day. I'm thinking in particular about those who are neurodivergent, have accessibility issues or partial sight loss and wondering if that would have an impact on those voters—just your thoughts on that generally.

JACKSON REYNOLDS-RYAN: This is not our bread-and-butter issue so I'll hand to my colleagues from the intellectual disability and other mental health spaces. Our issue is something slightly different in terms of the materials that are handed to voters. For many people, the problem isn't being bombarded with information, as much as I'm aware that that's an issue for the neurodiverse community. The issue for many blind or vision-impaired voters is actually getting that information and getting it in accessible formats. If anything, our concern would be perhaps some change to laws to ensure that political parties and Independent candidates are actually required to develop their materials, whether policy materials or how-to-vote materials et cetera, in a way that is fully accessible and that that is enforced so that people who are blind or vision-impaired are actually able to access that ahead of voting and don't have to rely on someone else to distribute that information for them second-hand.

JAMES SIMPSON: If I could add that, from the point of view of people with intellectual disability, pre-poll voting is a very important option because the whole physical environment tends to be much less noisy and overwhelming, so it is a very important option. I'm sure it would be similar for autistic people. Having equal access to appropriate and understandable information in accessible formats at that pre-poll voting is all the more important than it perhaps is on election day itself.

Mrs SALLY QUINNELL: Do you think it would be worth discussing—you know how we have quiet times in shopping centres and things like that—whether there is maybe a time that could be designated during the pre-poll week or fortnight or whatever the pre-poll designated time frame is where all the volunteers agree to back off and there's a little bit of a quiet time of voting, if you will?

JAMES SIMPSON: I certainly think there's something to be said for that. I know that Service NSW operates that kind of system in their offices. I think there's certainly something to be said for that and worth considering.

JOANNE YATES: It's certainly worth exploring, Chair, but we wouldn't want to get to the point where, yet again, people with disability are segregated to vote in a certain way at a certain time in a certain place when the rest of the community have fully accessible polling places that they can get to at any time of day between 8.00 a.m. and 6.00 p.m. on polling day and any time in the pre-poll period. While it is an idea worth merit, there are unintended consequences of further segregating our community.

JAMES SIMPSON: Agreed.

The CHAIR: In relation to that, I know that in Victoria quiet polling places are being trialled. Are any of you aware of that? Do you have any comments on that?

JAMES SIMPSON: No, I'm afraid. Not from me.

JOANNE YATES: No, nothing.

The CHAIR: The Committee might need to obtain some additional information about that trial.

JACKSON REYNOLDS-RYAN: Only second-hand, Chair. I sit on a number of these committees and I believe that they were swamped when they tried it. It became a bit too popular so that defeated the purpose of it. But that's second-hand information.

JOANNE YATES: And it might well be that we just need to curb the enthusiasm of people who are doing how-to-votes on the day rather than necessarily asking the disability community to come to terms with a quiet place. Perhaps that's the option that we seek rather than the other way around.

The Hon. CHRIS RATH: That might be difficult.

The CHAIR: It's something that I think the Committee will need to explore.

Mr NATHAN HAGARTY: This question is probably for Mr Simpson, given that it was in the CID submission, but anyone else can chime in. Recommendation four is to develop appropriate safeguards to protect people with intellectual disability from coercion or influence while using technology-assisted voting. Do you have any actual examples of that? Because I'd be concerned if there was a pattern of that happening. That question is obviously not just for you, but for any of you—examples where someone was perhaps being coerced or influenced to vote a certain way?

JAMES SIMPSON: I don't have specific examples but, from my experience, I could well imagine that to be an issue. I think that the most important safeguard there is something where—there's a strong movement across government right now and that's towards more and more empowerment of supported decision-making for people with disability so that people are better able to assert their own will and have the independent support for them to be able to do so. It's a legitimate issue that needs to be safeguarded against. It's the kind of thing that, on the advisory committee for the State Electoral Commission, we'd be more than happy to contribute to further.

Mr NATHAN HAGARTY: Anyone else?

JOANNE YATES: Just to endorse the view.

Mr TIM JAMES: I did note the reference to the concierge arrangement, if we can call it that, that was in place—I don't know if it was across all jurisdictions—for the referendum last year. I want to understand that some more and think about that in terms of its role and place going forward. What would be your expectations of that, particularly, obviously, when we hope and expect that a technology-based system à la iVote will return? I guess you want all options on the table. Help me to understand that some more, both in terms of how it did run but also how you would like something similar to run going forward.

JAMES SIMPSON: I think that was in our submission and I'm afraid I can only make a general comment about it. Certainly, in a range of contexts, it's so helpful to a person with intellectual disability who has arrived in a new or confusing environment if there's a friendly, welcoming voice who then answers their questions and directs them in the right direction. It's something, again, that Service NSW has made some really good steps forward on for the whole community. I can certainly see a clear reason, in a polling booth—rather than just turning up and there being an assumption that everyone who turns up will then know what to do—to have someone at the door who's welcoming and clearly able to guide people in the right direction. I think there's a lot to be said for that.

The CHAIR: In relation to telephone-assisted voting, what are the ways that you might recommend that it could be improved in terms of user confidence—in confidentiality, in accuracy and recording votes? Are there any specific suggestions any of you could make?

BRUCE MAGUIRE: One suggestion that we have made, and the Electoral Commission is certainly considering, is in the—normally what happens when you use the telephone voting system is that you dictate your voting preferences to one of the operators and then another person, who listens to that process, can read back those preferences, if you want them to, as a way of verifying that your preferences have been notated correctly.

Our suggestion has been that the person who reads back the preferences shouldn't listen to the original dictation. They should be a completely separate pair of eyes that comes in after you've finished dictating your preferences to the original operator. That would eliminate the possibility that the person has heard what you've said and just naturally assumes that it has been written down correctly. That's a suggestion that we've made, and the commission is considering that. We will be involved in some testing of the telephone voting system in June with the commission, and there may well be some other suggestions that come out of the testing process that we will be able to work with the commission to implement, hopefully.

JACKSON REYNOLDS-RYAN: I just note that we wholeheartedly endorse the suggestion from Vision Australia to have that as a two-step process as opposed to a single step.

The CHAIR: I think that's about it. We've got a lot of information. We will be putting some of these questions to the commission when we hear from them later this afternoon as well. I thank you all for appearing before us today. You will be provided with a copy of the transcript of your evidence for corrections. Committee staff will also email any questions taken on notice—I don't think there were any today—and any supplementary questions from the Committee. Thank you very much, all of you, for attending.

(The witnesses withdrew.)

Mr RICHARD SHIELDS, State Director, Liberal Party of Australia, NSW Division, sworn and examined

The CHAIR: I welcome our next witness. Thank you for appearing before the Committee today to give evidence. Please note that Committee staff will be taking photos and videos during the hearing. The photos and videos may be used on the Legislative Assembly social media pages. Please let Committee staff know if you object to having photos and videos taken.

RICHARD SHIELDS: As long as it's my good side!

The CHAIR: I think we can guarantee that. Before we start, do you have any questions about the hearing process?

RICHARD SHIELDS: No.

The CHAIR: Would you like to make a short opening statement before we begin?

RICHARD SHIELDS: Yes, I will. Thank you, Mr Chair. Before I commence with my opening remarks, I'd like to note the recent resignation of the NSW Electoral Commissioner, John Schmidt, who spent almost eight years in the role and 40 years in public service. As the State Director of the Liberal Party of Australia, NSW Division, I would like to put on record our appreciation for the hard work and dedication of Mr Schmidt, who has dutifully fulfilled the purpose of the NSW Electoral Commission, which is to deliver trusted and independent systems, processes, oversight and engagement that support democracy in New South Wales.

The Liberal Party of Australia, NSW Division, welcomes the opportunity to make a submission to the Joint Standing Committee on Electoral Matters inquiry into the administration of the 2023 New South Wales State election. Broadly speaking, the party believes that the election was conducted in a satisfactory manner, and we acknowledge the professionalism, experience and efforts of the NSW Electoral Commission in preparing for and conducting the election. The party seeks to maintain an effective, professional and constructive relationship with the NSW Electoral Commission, not only during election campaigns but throughout the electoral cycle. We view this relationship as critical to the ongoing conduct of elections.

Fair, democratic elections are the cornerstone of the Australian and New South Wales political systems and, as such, the Liberal Party is naturally focused on ensuring that elections, including preparations, are undertaken to the highest standard, both to ensure ongoing community confidence in New South Wales electoral processes and to enable and assist political organisations and candidates to contest elections in a fair and easy manner. With this in mind, the Liberal Party believes there are some elements of the election, and the administration of the election, that could be improved. These suggestions are made as a constructive contribution within the framework of our good working relationship with the NSW Electoral Commission. I am happy to take questions from Committee members, with the slight caveat that I was appointed the State director late last year and was, therefore, not in the role during the 2023 State election.

The Hon. CHRIS RATH: Thank you, Mr Shields, for joining today. I was wondering what your views were on the merits of truth in political advertising, and who or what entity should determine what truth is?

RICHARD SHIELDS: It's a very good question. A conversation has been had by members of Parliament across the country and in Canberra and with electoral officials as to truth in advertising. In 1983 the Commonwealth Government introduced truth in advertising into legislation, but a year after its introduction it was revoked because of difficulty in implementing it. With your indulgence, Mr Rath, I will talk about some of the views taken at that time, in the '80s, because the views that were raised in the JSCEM inquiry in Canberra and the concerns that were raised at that time are still very relevant today, even though this was done some years ago.

This was from 1983. A majority of the committee expressed the following criticisms of the discussion about truth in advertising. One of the elements was, "Political advertising involves intangibles, ideas, policies and images which cannot be subjected to a test of truth, truth itself being inherently difficult to define." Another point is, "As evidence was given that even predictions and opinions may imply statements as to present fact, and thus be subject to the section, the section was considered to be so broad as to be unworkable."

The South Australian State implemented truth in advertising. I think it was in 2020. In a review after the South Australian election at that time, the electoral commissioner expressed some views about the difficulty in implementing truth in advertising and that it was a distraction away from him implementing the electoral process. He very cheekily said that maybe the Commonwealth Electoral Commissioner could adjudicate on matters of truth. Again, Mr Rath, if you indulge me, the South Australian commissioner said in 2021, "When you run an election, you're responsible for the conduct of so many different parts of an election. I'm drawn away from the many other important aspects of the election to focus on administering this piece of legislation. I find that quite challenging because there are so many other things occurring, particularly during the early voting period. We have a two-week period in South Australia and on polling day it is safe to say that the vast majority of my time is dealing with these matters to the exception of all other matters happening."

When the South Australian commissioner said, "Perhaps this is something that this Committee could set about for the Commonwealth to consider", the AEC commissioner also responded in an interesting way, in which he said, when asked the question what do you think about the AEC's role in misinformation and disinformation, "We're pretty comfortable that our role is to defend the electoral system, to defend and make citizens aware of the process of voting. In terms of truth in advertising, any involvement of an electoral administration body I think runs counter to the principles of neutrality and non-partisanship. The moment the commissioner makes a ruling about a fact that someone said, you're alienating a large proportion of the population because, at election time in particular, it's a contest of ideas. One person's fact is another person's falsehood."

I think there is a role for some form of truth in advertising and I wish every success to whoever is doing that, but I prefer not the AEC to be the organisation involved in that process." Good idea in principle; very hard to implement. But I would say that the current Electoral Act, section 180, does deal in this area in which there is a section relating to providing misinformation that is going to destroy the fabric of the electoral process, and that is currently punishable under the Electoral Act, which I think is section 180.

The Hon. CHRIS RATH: More truth in electoral system rather than truth in political advertising if I can put the differentiation between the two.

RICHARD SHIELDS: Yes.

The Hon. CHRIS RATH: Not adjudicating on policy, but adjudicating on truth regarding the process of the electoral system.

RICHARD SHIELDS: Yes. Excellent point.

The Hon. CHRIS RATH: I want to turn to electoral funding and donations. Are you largely happy with the current system, or are there any changes that you would like to see?

RICHARD SHIELDS: There have been discussions about prohibited donors, and that's one of the terms of reference. The decision to prohibit donors is a matter for the Legislature to make those views, but I will say that any change to electoral donations needs to be mindful that compliance is a key thing for the professional wings of the party. In donations, it needs to be clear to the party whether the person or company is indeed prohibited. If we're talking about shelf companies—that's one of the terms of reference—there is an incredible amount of research with shelf companies and shelf companies involved in potential property developers. With that difficulty in the research, if there is a move by the Parliament to make such adjustments, I would actually just ask for the Electoral Commission because there is difficulty in really drilling down into a shelf company and who owns it. There'd be a bit of sensitivity from the Electoral Commission if errors took place.

Regarding a proposition that any group associated with a property developer should be banned, I did a quick thought as to what businesses are involved in property development—let's call them secondary businesses—and moving into any business involved would involve real estate agents, and I'm sure there are other people, builders, plumbers, electricians, engineers, surveyors, town planners, delivery services, hardware stores, lawyers, accountants, banks. Any move away, any further extension of the existing donation and the prohibition on property developers just needs to be mindful of the compliance in meeting the legislation from the professional wings of all the parties across the spectrum.

Mr NATHAN HAGARTY: In your submission, you've got a section on voter identification, and you suggest that it wouldn't be unreasonable to suggest that an elector attending a polling booth have some form of ID.

RICHARD SHIELDS: Yes.

Mr NATHAN HAGARTY: And you refer to, I think, a JSCEM report from 2013 where there were 2,013 instances of someone admitting to voting twice. Given that 13,000,700 people voted in that election, what

do you say to the contention that the introduction of voter IDs is not in fact to prevent double voting; it is to in fact disenfranchise people on the assumption that that might have electoral favourability to one side or another?

RICHARD SHIELDS: I would say that, when you look at the aggregate of the vote, it's also important to look at the margin of each particular seat. I think, from memory, the seat that had the smallest margin was 56. Fifty-six? I think it was 56, Jordan Lane.

Mr TIM JAMES: Fifty-four.

RICHARD SHIELDS: Fifty-four. I stand corrected, sir. You can't talk about issues in aggregate because elections are decided in a very small way. But I do thank you for the question. COVID has provided the vast majority of people—and, I would say, bordering on mid to late nineties—with access to Service NSW and QR codes. I acknowledge the efforts of former Minister Victor Dominello for revolutionising this process with QR codes and Service NSW.

Mr NATHAN HAGARTY: He invented the QR code, did he?

RICHARD SHIELDS: He's like Malcolm Turnbull. I think Malcolm Turnbull invented the internet as well, didn't he?

Mr NATHAN HAGARTY: Invented the internet, yes. Amazing.

RICHARD SHIELDS: Also the digital driver licence was implemented with Minister Dominello as well, which, I might add, the Victorian Government has only just done in the last couple of weeks. The Victorians are laggards when it comes to adopting technology that was implemented by the former Coalition Government. If it's good enough, and sorry, I might have put this in the report, to show ID when you go to the RSL club to get your chicken parmigiana and your soft drink or your beer—you show ID when you do that—but there are so many other ways other than just photographic ID. Everyone has some form of ID, but if there is concern that some people may not have ID, in Queensland when this was introduced and then the former Labor Government reversed it, letters were sent out to electors saying, "This is how you're going to vote and, by the way, if you bring this letter, this is evidence of who you say you are." I actually think in this day and age I don't understand why we don't have voter ID when you go into the ballot booth. It's always astounding to me—

Mr NATHAN HAGARTY: But what's the problem we're trying to solve?

RICHARD SHIELDS: I'll go back to my purpose of the NSW Electoral Commission. If I can find my opening speech—bear with me, sir—the purpose of the NSW Electoral Commission is to deliver trusted and independent systems, processes, oversight and engagement that support democracy. I think voter ID encapsulates the purpose of the NSW Electoral Commission.

The CHAIR: At these hearings over many years, I think three Electoral Commissioners have all said they can see no value in having voter ID; it was unnecessary. When the recommendation of this Committee went to the last Government, the last Government said it wasn't necessary and declined to implement that recommendation of the Committee. Can you indicate why the current Government should implement something that the last Government, on the recommendation of the Electoral Commissioner, said wasn't necessary?

RICHARD SHIELDS: It's always been a point of view that I have had, which is that you turn up to a booth and all you need to do is say your name and your address. But can I give you a story, and I'll de-identify it. In 1995 in the Coogee election—and Mr Rath loves these stories. He hasn't heard this one, though. As you'll probably remember, 1991 was a close result; 1995, not so much—Ernie Page and Margaret Martin. I was at university at the time and involved in student politics, and I related to and engaged with many people across the various parties—many friends, and I still have these friends.

One such person—I'm not sure what this person is doing now—turned up to this booth in a car with four people. This person sees me. They start running towards the booth; they see me. The person I know yells out to them and says, "Oi!" They all turn around and they go back into the car—five people. That's what I witnessed. I don't know what they were doing; perhaps they had forgotten their wallets or something. But when it comes to transparency and honesty and small margins, as are reflected with the 54-vote margin that occurred last time, I still stand by my view that voter identification is critical to the purpose of the NSW Electoral Commission.

The CHAIR: We'll raise it again with the Acting Electoral Commissioner this afternoon, I'm sure, to see if he concurs with your anecdote.

Mr NATHAN HAGARTY: Maybe we can check if he also compares going into a booth and expressing your democratic will, in a similar fashion, to getting a chicken parmigiana.

The CHAIR: Maybe we should move on.

Mr TIM JAMES: On this topic, it is a fact, is it not, that in spite of and respecting the views and statements of electoral commissioners in the past, it has nonetheless been the case that the Electoral Commissioner has brought evidence to this Committee that offences pertaining to multiple votes have occurred, that they are difficult to prosecute and that they can lead to fraud? That is a fact here in the context of New South Wales. At a Federal level—and this is what ultimately prompted the Morrison Government to seek to act upon this legislatively, but which it was unable to proceed with—it is a fact that is in evidence from the Australian Electoral Commission that almost 20,000 instances of multiple marks were present following the 2013 election. It should be pointed out that that was a very close election. Many of them were able to be resolved, but about a third of them—6,000 or so instances—remained unresolved. As we've heard today, one seat in New South Wales, being Ryde, was won by 54 votes. I, for one, would certainly like to know what evidence the Electoral Commission has of multiple votes in the context of that seat. But there is a real issue here. This is not a confected, made-up issue.

The CHAIR: Mr James, do you have a question?

Mr TIM JAMES: Yes, I do have a question, which is this, Mr Shields—and I hear you on purpose. This is a real, lived, evidenced issue, is it not? For that reason alone, it should be looked into by policymakers and pursued by this Committee. It isn't just a matter of the opinion of electoral commissioners or points of view of people on this Committee.

RICHARD SHIELDS: I agree. Good point.

The CHAIR: Concise response.

The Hon. CHRIS RATH: We've spoken at length in this Committee, now and in the past, on iVote, which was obviously completely bungled during the 2021 local government elections. Do you have any views or thoughts on electronic voting? I know that the Liberal Party internally does it in preselections, but do you have any observations or views you would like to give to the Committee on iVote?

RICHARD SHIELDS: I think it's important, and again going back to the purpose of the Electoral Commission, that everyone that wants to vote—I acknowledge it's compulsory voting, but anyone that wants to vote should be able to vote. Technology or circumstance should not be a reason for the vote not to occur. It is my view that we need to do everything in our power to make sure that everyone can vote. We heard from the previous witnesses about the importance of voting, especially for people that have an impairment such as a visual impairment. Mr Rath, you are correct: We in the Liberal Party do preselections, and in preselections we do plebiscites. We include all the members in a particular area, and to expedite the matter we use a system called BigPulse.

I understand one of the concerns—and I haven't gone into the concerns forensically—that led to the problems with iVoting previously. The system that we use provides a receipt to the voter after they conclude their vote, but it is also auditable. If a scrutineer is concerned about a particular voting practice then under the system that we use, the BigPulse system, you can have an audit trail of the voting system. I think it's important. I can't talk to the scale—the ability for BigPulse to scale up—but that's an example of a system that we use, and we have detailed preselections. I know other parties don't necessarily have to have these detailed preselections, but we do. We've come up with an excellent process with it.

The CHAIR: To improve counting timelines, the NSW Electoral Commission has proposed opening early and postal votes before the close of voting on election day. Can you tell us what your view is on that proposal?

RICHARD SHIELDS: I might have to take that one on notice, sir.

The CHAIR: Thank you, that's good. Are there any further questions?

Mr NATHAN HAGARTY: No, I've heard enough.

The Hon. BOB NANVA: Mr Shields, this is probably not the most critical issue, but I am interested in what you think. Election days in New South Wales have largely become an arms race to compete for prime real estate—limited fence space in front of schools and public buildings, clogging up footpaths with A-frames and each candidate trying to outdo the others. It can become a pretty unedifying spectacle. Do you have a view on the Victorian-style restrictions on election signage on election day?

RICHARD SHIELDS: I'll have to further analyse the Victorian system, Mr Nanva, but can I provide this commentary? It is very important when you are a director or, say, a general secretary that when you have concerns on election day about signage or about particular metreage from the six metres from the entrance to the polling booth—is that from the hall or is that from the gate?—that general secretaries and State directors are able

to call up someone in the Electoral Commission very quickly, and there is a process that exists now. When I was formerly in the deputy role in 2011, it was a different system.

I appreciate it's a different age—we're 12 or 13 years gone from that time—but in the lead-up to the 2011 election, the Electoral Commissioner of the day said to me, if we had issues on polling day, to call him directly and that he would address the issues in a timely manner. I am not sure if the former general secretary had any concerns about on-the-day rulings, but that is some insight that we have had—that we would like a more expeditious decision-making process on election day with the Electoral Commission. I would enjoy taking this issue up with the acting commissioner or his permanent replacement when the commissioner is permanently appointed in the next couple of months.

The Hon. BOB NANVA: That actually leads to the next question I was going to ask. I do have some very strong views about the resolution of complaints made during the voting period and making sure that they are dealt with in a timely way. I am cognisant of the fact that you were not the director during the last campaign, but have you received any feedback from your predecessor with respect to the timeliness of complaints management, the manner in which complaints can be raised and whether or not complaints were resolved adequately during the last campaign? It is okay if you did not. I am just interested.

RICHARD SHIELDS: First of all, I will just talk about a positive, because I'm a positive guy. The Electoral Commissioner and the New South Wales police did respond very quickly to the distribution of unauthorised material in Holsworthy, which included racist and xenophobic statements and attempted to come from the Liberal candidate, now MP, Tina Ayyad. The Electoral Commission responded very well. It's a constant query that we'll get from our volunteers on polling day that a local returning officer will make a ruling which is not consistent with the ruling across the State. Without going into specifics, it would assist our processes if we had a hotline that existed in my day—when I didn't have any grey hair—in 2011, when we could go directly to the Electoral Commissioner on election day to expedite a local decision.

The Hon. CHRIS RATH: I know we do not have long, but I asked this question to Antony Green this morning as well.

RICHARD SHIELDS: I am definitely not Antony Green.

The Hon. CHRIS RATH: But I'd appreciate your views on early voting. At the last State election we reduced it from two weeks to one. Do you have any thoughts on whether that was a better system and whether the number of pre-poll locations was appropriate or whether we need more or less? The example I used with him was that sometimes if you have more locations you are just encouraging early voting, because people would walk past, especially if it is in a busy area, and they might not be intending to vote that day but they cast a vote anyway, even if they could very well vote on election day. Do you have any thoughts on early voting?

RICHARD SHIELDS: Yes. Thank you, Mr Rath. I do support the current Electoral Act section 6 which talks about a one-week duration period for voters who are unable to attend a voting centre on election day. Section 6 does provide examples as to the eligibility of voting earlier. We are moving in a direction where voters are simply voting early to get voting out of the way. My view is that we should maintain a one-week period of early voting being opened. We want voters to have the full set of information before them when they make their decision. As you would be aware, often campaign launches and significant policies are only done in the last week, so it would be my preference that the law remains, for two reasons—to keep the intention of the Act, which is for when you are unable to be there, rather than just as a convenience to get it out of the way. I have a preference as well which is that there would only be one early voting centre per Legislative Assembly area.

The CHAIR: Thank you very much for appearing today. You will be provided with a copy of the transcript of your evidence for correction. Committee staff will email any questions taken on notice and any supplementary questions from the Committee. Given that our other witnesses are here, I propose that we have a five-minute break instead of a 15-minute break and then finish up a little bit earlier. We will resume in five minutes.

(The witness withdrew.)

(Short adjournment)

Dr MATTHEW PHILLIPS, Acting Electoral Commissioner for New South Wales, NSW Electoral Commission, sworn and examined

Mr HUGO BERGERON, Acting Executive Director, Funding Disclosure and Compliance, NSW Electoral Commission, affirmed and examined

Ms PHILIPPA BRANDON, Director, Communications, NSW Electoral Commission, sworn and examined

Mr JOHN CANT, Executive Director, Digital Modernisation, NSW Electoral Commission, affirmed and examined

Mr DOUG CATCHPOLE, Director, Finance, NSW Electoral Commission, sworn and examined

Dr VLADAS LEONAS, Executive Director, Information Services, NSW Electoral Commission, affirmed and examined

Ms ANDREA SUMMERELL, Executive Director, Elections, NSW Electoral Commission, before the Committee via videoconference, affirmed and examined

The CHAIR: I welcome our next witnesses. Thank you for appearing before the Committee today to give evidence. Please note that Committee staff will be taking photos and videos during the hearing. The photos and videos may be used on the Legislative Assembly's social media pages. Please let Committee staff know if you object to having photos and videos taken. Before we start, do any of you have any questions about the hearing process?

MATTHEW PHILLIPS: No.

The CHAIR: Would any of you like to make a short opening statement before we begin questions?

MATTHEW PHILLIPS: Thank you for the opportunity to appear before the Committee this afternoon. The Committee will be aware that John Schmidt retired on Friday 5 April. I was appointed to the role of Acting Electoral Commissioner effective 6 April for a period of six months, or until a permanent commissioner is appointed. My substantive role within the commission is the executive director of the corporate division, also the chief audit executive. I have appeared before this Committee many times in those capacities. I thank the staff of the NSW Electoral Commission, who are supporting me here today and online. Given that I am just six weeks into the role, I may defer to my colleagues in order to provide comprehensive responses to your questions.

I would like to acknowledge and thank John Schmidt for his leadership in delivering the 2023 State general election. Over his eight-year tenure as Electoral Commissioner, John was a staunch and vocal advocate for the commission to achieve a more sustainable funding model and, over several years via many submissions and hearings, raised concerns about the adequacy of our funding. John leaves behind a strong legacy that places the NSW Electoral Commission in a stronger position than when he came to the helm and one that is very much focused on the work, health and safety of all its employees.

Now onto the 2023 New South Wales State election: A general election is one of the largest community events held in New South Wales, involving more than 5.5 million electors; 25,000 staff; 2,500 voting centres; and a complex logistical and safety framework. It also involves hundreds of candidates, parties and campaigners, whose participation in the election is subject to meeting important transparency and integrity obligations under New South Wales electoral legislation. The election was successfully and safely delivered, despite the short runway for the planning following the pandemic-related postponements of the local government elections from September 2020 to December 2021, and the need to implement legislative amendments. The election had a 90 per cent turnout rate, and 90 per cent of electors surveyed post the election were satisfied with their overall voting experience. This is up from 84 per cent at the State general election in 2019.

Several important themes emerged during the administration of this election to do with, one, voting; two, trust and integrity; and, three, safety. Regarding voting, there was a noticeable continuation of the rise in early voting. More than 1.57 million early votes were cast at the State general election in 2023, compared with 1.02 million at the State general election in 2019, representing an increase of more than 50 per cent. This had consequences both for the administration of the election and the campaigning by electoral participants. The uptake of postal voting tripled compared with the State general election in 2019, noting that iVote was not available at the State general election in March 2023.

Regarding trust and integrity, a high level of public trust in the integrity of the New South Wales elections was maintained but was threatened by disinformation and misinformation. Regarding safety, the safety and wellbeing of election officials was impacted through being filmed, harassed and falsely accused of wrongdoing while carrying out their duties by members of the public. In some cases this footage was uploaded to social media

channels. It is a great disappointment that some disinformation was created or amplified by candidates at the election. We contacted the relevant social media organisations to request removal of this content. All requests were actioned within 24 hours and the content was removed in all but one case. But in that case a warning label was added to the post stating that it includes false information and it linked to a fact-checking article.

The Electoral Commission continued to prioritise the safety of its staff at the State general election. Election officials, including head office staff, must necessarily work long hours during the election's peak operational period. Our new safety principles reduce the risk of fatigue. The issues of safety, trust and integrity remain at the forefront of our planning for the local government elections in September this year and are a focus of our annual regulatory priorities. The Electoral Commission's internet-based voting platform, iVote, as you're aware, was not available at the 2023 State election. Our reasoning for this is well documented. We did offer operator-assisted telephone voting for electors who are blind or have low vision, and we hope to offer it again at the 2024 local government elections in September.

As the Committee will be aware from our technology-assisted voting review final report released in late 2023, we are investigating the provision of technology-assisted voting for electors who are blind or have low vision at the 2027 State general election. The technology-assisted voting review and recommendations are with the Government for consideration. No decision has been made at this time. The ability to deliver a solution is contingent on a secure solution being available, funding from the Government and related legislative amendments. All of these themes are well documented in our report on the administration of the election, which is published on our website, tabled in both Houses and submitted as evidence for this inquiry. The report also includes our proposals for legislative reform, as does our submission to this inquiry.

Despite the removal of a voting channel—that is, iVote—and a shorter early voting period, elector satisfaction rates were very high. We also enjoyed high rates of staff satisfaction and engagement, as indicated by the Public Service Commission's people matter survey, with staff engagement scores well above the public sector average. Our submission to this inquiry contains proposals for legislative reform and addresses the scope of regulation of political donations by property developers. It addresses the regulation of truth in political advertising. As outlined in our submission, the NSW Electoral Commission does not express a view about whether truth in advertising should be regulated. This is a matter of policy for the New South Wales Parliament. However, in our submission to the inquiry, the NSW Electoral Commission suggests that no function should be conferred on the Electoral Commissioner or the Electoral Commission without a clear understanding of the potential significant risks and impacts for the administration of elections in New South Wales.

In closing, I thank the Committee for this opportunity to appear today. I am grateful to the people of New South Wales, including political participants, for their part in the election. I would like to put on the record my sincere thanks and gratitude to the temporary staff—the tens of thousands of members of the community who came to work for us to help deliver an election—and the extraordinary work that they do. We could not do it without these staff. Finally, I cannot express enough my thanks to the hardworking staff at the NSW Electoral Commission. Without their commitment and passion, we could not deliver democracy safely in this State. With that, I'll close my opening statement and welcome any questions from the members of the Committee. Thank you.

The Hon. SAM FARRAWAY: Thank you, everyone, for attending. I would like to turn to your proposal, straight to the early voting centres. In particular, in your submission you propose processing early and postal votes before the close of voting. For a bit of context, we had Antony Green and Ben Raue here today talking about the process, in particular, of the Legislative Council boxes at polling booths perhaps not being opened when the counting starts, to speed the time up to count Assembly votes to get that result out for the community, the voting public. Within that context, I want to specifically ask whether the Electoral Commission supports or has looked at proposals that include not opening the Council boxes. From the Electoral Commission's point of view, what are you proposing to speed up the process of counting the vote?

MATTHEW PHILLIPS: I should just note that the count timetable for the 2023 State election was communicated to all political participants and the public throughout the election. I would say the Electoral Commission met the results deadline as published prior to the election, so we're proud of that. We always prioritise accuracy over the speed of the count. While important, accuracy is the most important consideration with respect to the count process. Following the election, we have heard comments about the speed of the count, both on the night and in submissions that you have before you. We undertake an extensive process following an election to look at where we can do things better. This is one area that we've looked at that, potentially, the count could be improved in terms of its timeliness.

The key drivers there, one of which is around increasing resources—it is a matter of staff, in voting centres and at our central count centres as well. More staff, and with more training as well—we can increase the speed without sacrificing the accuracy of that vote count. We're also looking at procuring additional count venues

and hubs and looking at other means to increase our resource complement throughout the election, noting that we did employ in excess of 25,000 staff just on election day itself. We're looking at also a proposal around amending the timeline for priority of the counts, so that could include establishing a different timeline for the LA and LC counting and results. I think Mr Green picked that up this morning about delaying the counting of LC votes until after election weekend.

We're also looking around potentials for or considering introducing LC ballot scanning. I should just note: no initial manual count for the LC in polling places and election managed offices and introduce the ballot scanning process. The Electoral Commission is exploring the implementation of ballot paper scanning of the LC ballot papers as part of its digital modernisation program. Should that program be funded? That's currently before the Government for consideration. We would consult more broadly before we implement. Yes, there is an option for us to consider simplifying on the night and also to look at around the timeframes of when we open and so forth.

The Hon. SAM FARRAWAY: Do you see merit in, perhaps, what Mr Green was saying earlier in his submission and his recommendation that Council boxes not be opened on election night once counting has commenced and only Assembly boxes, just to use your time as wisely as possible to get the community as accurate a result? I accept the accuracy. I suppose this is more about process. My question is, one, have you considered that? Two, do you see merit in it? Three, you talk about the processing of ballot papers from early voting centres and postal votes, counting them prior to the close of voting on election day on a trial basis for the 2027 election. Do you want to expand on what that trial would look like?

MATTHEW PHILLIPS: To your first question, yes, we are considering and, yes, I do see that there is merit in not opening the LC ballot boxes on election night and focusing our efforts on the LA. I do see merit in that, absolutely, and it's worthy of further consideration. I trust this Committee will be looking at that process and having resulting recommendations coming out of that. The next one was around looking at the pre-poll ballot papers prior to the close of voting.

This is another area that the Electoral Commission is investigating. It's one of our recommendations, and that's access to early votes prior to 6.00 p.m. on election day to commence counting—much like the AEC and the Victorian Electoral Commission as well. In the 2023 election report, we've proposed a legislative amendment to authorise additional processing of ballot papers from early voting centres and postal ballot papers prior to the close of voting on election day on a trial basis in districts determined by the Electoral Commissioner to better manage the counting timelines in the context of increased postal and early voting. That is one of our proposals included in our report to this Committee.

The Hon. SAM FARRAWAY: When would that start—on polling day itself in the main EVC in each electorate?

MATTHEW PHILLIPS: Yes. I think, if I remember correctly—Andrea Summerell is our executive director, elections, and will have greater visibility on this. There are two models. Andrea may go to the AEC and the VEC models with respect to opening of those pre-poll votes.

ANDREA SUMMERELL: The first thing I'll point out is that under our State legislation the handling of postal votes actually permits us to extract the ballots from the postal vote certificates in the lead-up to the election. It has provided us with a very clear example of being able to count those postal votes quicker because we've been able to extract them and unfold them. As Matthew Phillips has said, we do encourage, or we support, the introduction of doing the same for the early voting. The Federal body—they are able to extract the ballots from the ballot box for pre-poll. They are able to sort them into the groups and then the actual inspection of the ballots and the counting doesn't happen until after 6.00 p.m. But as Mr Green had mentioned earlier, that unfolding really does allow us to be able to then get the results much quicker after 6.00 p.m.

In relation to the questions you were asking, I think the points that Mr Green raised—it is going to be very difficult, with the rise of early voting numbers, for us to be able to count significant numbers of Legislative Assembly ballots without having some of these levers that we could introduce, that is, not counting the Legislative Council ballots and also the early access. Those things would be necessary just because of the volume that we would have to get through on election night to get results quicker for the lower House.

Ms CATE FAEHRMANN: A number of witnesses have talked about the administrative burden of complying with the commission's disclosure system. We've heard that the commission should improve its financial disclosure program to make it compatible also with modern accounting software to prevent errors. I'm wondering whether there are any plans to upgrade the commission's process for administering the financial disclosures, or whether there's any comment broadly about that burden on political parties?

HUGO BERGERON: I'll take this one. I guess one of the difficulties is that a lot of the accounting software out there does not necessarily capture all of the information that's required to be disclosed, so it might make it difficult to do an interface. However, we have suggested that any party, or any candidate for that matter, that would like to show us what information they have in their system and in what format that can be produced—we'd be willing to look into that to see whether we can facilitate that process with them. But, as I said, there's a lot of information. For example, in relation to donations there's obviously the address of the donor and the date received—that's all probably standard information—but in some cases you are also required to disclose previous small political donations that, when aggregated, became reportable political donations. There are a lot of requirements under the legislation—it's not the commission's requirements; it's the legislation requirements—that may make it difficult for an accounting software to actually capture all of the required information to be disclosed.

Ms CATE FAEHRMANN: We've just heard from the disability sector, about the iVote system for the 2027 election, that they've been assured that there will be some form of iVote again for 2027. However, we've also heard from Dr Vanessa Teague about her concerns—and the concerns of experts like her—about the safety of that. What are the commission's views about internet voting for 2027, even if it is for a smaller cohort? Are you confident that the right level of security is in place for that if it does take place?

MATTHEW PHILLIPS: I will take that, Chair. Can I start by saying that no decision has been made at this time as to whether internet voting—iVote or a replacement—will be available at the State general election in 2027. It's a policy currently before the New South Wales Government. No decision has been made. As this Committee would be aware, my predecessor, John Schmidt, undertook a comprehensive review of technology-assisted voting, the purpose of which was to examine the feasibility of internet and other forms of technology-assisted voting for New South Wales State and local government elections. The review presented a number of carefully balanced and considered options on technology-assisted voting in the future. These options were informed through a thorough consideration of the risks—cyber and otherwise—and the costs and benefits of tech-assisted voting, and were informed by the view of stakeholders.

With respect to internet voting and balancing the issues of risk and stakeholder interest, the TAV review found that internet voting may be feasible, for electors who are blind or who have low vision, from 2027 for the State and local government elections after the State general election. However, this was contingent on the availability of suitable market solutions, adequate government funding and legislative reform. Consistent with those recommendations, the NSW Electoral Commission has engaged the market through a request for information process earlier this year to validate if there is a viable and secure solution for providing internet voting, but only for those electors who are blind or who have low vision—a very small cohort. That was a very important point coming out of the TAV review. This is not a broad-scale implementation of iVote as in the past. Granted there was eligibility criteria. Here is a very small targeted solution just for the blind and low vision community. The RFI process—we went to market to see if there was a solution. We had seven responses, Mr Cant?

JOHN CANT: Yes, seven.

MATTHEW PHILLIPS: Through an evaluation, we thought two could provide a secure, robust solution. That then informed the development of a business case to government and that's being considered as part of the 2024-25 budget process, which is coming to an end. As I said, this business case and the future of internet voting in New South Wales is currently before the New South Wales Government. I'm happy to provide this Committee with an update once we find out and once we are advised of our budget bid. That should be in the next couple of weeks. Noting that we value our relationships with the blind and low vision communities—and particularly the peak organisations—if the Government does agree to a small rollout of internet voting for those electors, we will work with them to co-design internet voting into the future, noting that a decision has not been made at this time. We have presented options to government, but ultimately it is a decision for government whether or not to proceed with internet voting.

The CHAIR: I would point out that this Committee has a reference in relation to examining this, so we'll be taking you up on that offer of having a much longer conversation, I suspect.

MATTHEW PHILLIPS: We're also happy to submit relevant materials in written form or appear before the Committee on that very issue.

Mr NATHAN HAGARTY: We've had some feedback from some of the submissions in relation to frustrations with some of the technology. We've covered that in terms of voting but in terms of the administration—and in particular I believe the Labor Party made a submission about the limit of uploading disclosures and receipts and that kind of thing—do you have anything to add there? What would aid you as an agency in order to digitise and make the process smoother for everyone?

MATTHEW PHILLIPS: I will get the acting director for funding disclosure and compliance to talk about FDC—funding disclosure and compliance—online in a second. That relates to the uploading of political disclosures and so forth, so Hugo will cover off on that. More generally, as this Committee would be aware—and the estimates committee definitely would be aware—our systems are aged, at end of life and are in need of urgent replacement. We have presented a comprehensive reform program to government known as the Digital Modernisation Program. Mr Cant has been taken off line from the commission to focus solely on that program. That is to look at updating the—I think we have in excess of 40—election systems that we use. They are very dependent on a couple of key persons within the agency.

Mr Cant and the electoral commissioner have presented a reform program to government on how we can improve those systems to make them more secure, more robust and more customer-centred and -focused. That, again, is before government and, again, decisions are imminent as to whether or not funding is provided. Again, I am happy to provide this Committee with the decision in that regard. I'll ask the acting executive director of funding, disclosure and compliance to talk about the FDC online project which looks at political disclosures.

HUGO BERGERON: The FDC online project is essentially a project to implement an online portal, which went live a few years ago, to lodge disclosures but also lodge public funding claims. The next release will be about party registration applications and also amendments and annual returns. As part of the project, yes, we have experienced a few issues in relation to bulk upload of information and amendments. It is still a live project, so we are noting some of these issues and also trying to address them. The project is still ongoing, which is great because we do have the resources to be able to address those issues. We are working actively with the parties—mostly parties because they have the most volume of disclosures that are impacted—to make sure that we can actually increase the number of files that can be uploaded at the same time and things like that that would assist them in using the solution.

Mr NATHAN HAGARTY: Is there an ETA on this upgrade or update?

HUGO BERGERON: The issues fix is ongoing. There are a number of issues that are being tracked at the same time. The project is still ongoing until the end of the next financial year. This is the timeline in which we would be able to address those issues.

The Hon. BOB NANVA: I'm interested in your written submission and what it states in relation to concerns around the current postal vote application process, both with respect to security and privacy. I wonder if you can elaborate on that and provide the Committee with some insight into what the postal vote process might look like in the commission's eyes.

MATTHEW PHILLIPS: I will refer that question on to Ms Summerell.

ANDREA SUMMERELL: Are you talking in particular around the use of party-issued postal vote applications?

The Hon. BOB NANVA: Yes.

ANDREA SUMMERELL: In our submission we spoke about the issue of party and candidate postal vote applications, and we noted that during the recent 2023 State election, we had over 500,000 postal vote applications made, and 14 per cent of those were candidate and or party postal vote applications. We have introduced a number of measures to make sure that electors who are using those applications are aware of who's issuing those applications and where those applications are being returned to, and giving them an option to always come directly to the NSW Electoral Commission to make their application, either online or directly with our call centre or via a paper application.

The other issue we have administratively with party-issued or candidate-issued party postal vote applications is the slowness of the return of the information so that we can issue that postal pack. It is very much front of mind for us in relation to the very short timeline we have for State elections and the ability to get those packs out with a declining Australia Post service. We are very conscious that applications should be processed as quickly as possible, and we do see challenges to that when there is a third party involved in the application process. That's why we have recommended, similar to other jurisdictions such as Victoria, that consideration be given around the use of candidate-issued applications.

The Hon. BOB NANVA: I had one other question in relation to the electoral district cap and the general election caps, which are, along with the donation caps, the cornerstone of the New South Wales Electoral Funding Act. I've had a concern for some time regarding people complying with the spirit of those caps, not just the letter of the law with respect to them, and the arbitrary hypothecation of generic electorate material to specific electoral districts. Does the commission, in processing claims for funding from the election campaign fund, look to whether

or not, in the vouching material, specific expenditure would be better allocated to the general election caps rather than the electoral district caps, regardless of what the claimants might have submitted?

HUGO BERGERON: So your question is about when we deal with election funding claims? No, we don't do that as part of the election funding claims audit because, essentially, the party and all the candidates have to lodge to claim the expenditure at the same time. However, we do look at this in auditing disclosures made in relation to electoral expenditure which, depending on the timing of the election, might happen a bit later. We do have to administer and enforce the cap provision in accordance with the legislation. There is a specific provision. Section 9 (9) of the Electoral Funding Act allows a party to invoice a candidate for electoral expenditure incurred, and then that expenditure is taken to be incurred by the candidate.

It's pretty clear how section 9 (9) works. As a matter of course, when we audit the disclosure of parties and their candidates, we do ask for a spreadsheet of the rationale for the allocation of that expenditure. But, again, the Act would not necessarily allow us to challenge that rationale unless it was an obvious means, for example, of circumventing the expenditure cap. We are limited in being able to address this if we ever saw it—and I'm not saying we've seen it done this way, specifically, for expenditure combined of the party and the candidates to be increased or maximised, if you will.

The Hon. BOB NANVA: Do you have any concerns that generic electorate expenditure—let's say generic advertising, for example, or TV advertising—that doesn't specifically mention an electorate district or a specific candidate could, hypothetically, have it purported that it be attributed to a State electorate cap in an effort to artificially inflate the general election cap? Is that a concern at all to you or not?

HUGO BERGERON: It would be a matter of policy for the Parliament or Government. When it comes to us looking at this and enforcing the legislation, we do it the same for all parties, meaning that all parties have the similar ability, potentially, to do what you are alluding to. But, practically, I haven't seen egregious cases of this happening. I think it's not uncommon for parties to, as I say, invoice their candidate for expenditure, even if it's general expenditure. But that's also because general expenditure—if you talk about TV advertisements, for example, or main newspaper advertisements—would benefit all the candidates. Usually the parties would have a means to allocate that expenditure proportionally to their candidates. That might be split in 93 if they endorse 93 candidates in the Legislative Assembly, or they could have another means, depending on who that expenditure targets.

Mr NATHAN HAGARTY: Can I jump in? You said you haven't seen egregious examples of it. Have you seen any examples of it? Should it be egregious before action is taken?

HUGO BERGERON: Sorry, my choice of word was poor. I haven't seen obvious examples of this happening—not egregious.

The CHAIR: Acting Commissioner, is it the case that the commission is very strongly in support of the introduction of photo IDs for voters? If not, can you explain why not?

MATTHEW PHILLIPS: I thank you, and I think someone raised the issue before. For the NSW Electoral Commission, our primary focus is to get every single person that is enrolled to vote out to vote. Any mechanism that's put in place that potentially disenfranchises people from exercising their democratic right would be of concern for this agency. However, ultimately, it's a decision of Government. We are a service delivery agency within the New South Wales public sector. We will implement the legislation as it's written. Our focus is around getting people through our voting centres—our polling places at local government—and that is our primary focus.

The CHAIR: Do you believe that there's an evil that needs to be remedied?

MATTHEW PHILLIPS: Every time I've heard voter ID mentioned, it's in relation to looking at addressing the issue of multiple voting. I think it's potentially a solution almost looking for a problem. The incidence of multiple voting is very low in New South Wales. At the State general election we had 1,023 instances of double voting; that's down from 2,197 at the State general election in 2019. As we've maintained, there is no impact of those individuals on the election result, and the actual instances of multiple voting are much lower than the 1,000. This is based on—we've received 250 responses, as of 22 April '24, where 238 of those individuals advised they'd only voted once. I should just note the other 773 didn't reply. So it could be an error in the voting centre. We train our 25,000-plus people as best we can in the limited time that we have them, but errors do occur when you're dealing with 5.5 million electors, both pre and on the day. Errors do occur. Ultimately, I would ask what is the issue you are trying to address through voter ID. If it's multiple voting, I don't think the evidence is there to support the implementation of other measures to prevent it.

The Hon. CHRIS RATH: I take your point on voter ID, but I was wondering if you've given any thought to electronic mark-off. I know that's something that's been discussed before.

MATTHEW PHILLIPS: Yes.

The Hon. CHRIS RATH: That way you're not preventing people from voting if they don't have a valid form of identification, but you're just essentially reducing potential human error at the mark-off. Any double voting, potentially—you're not saying it's fraudulent; it could just be in the case that people forget, especially elderly people, for instance.

MATTHEW PHILLIPS: Yes, good point. We currently use electronic mark-off for all ordinary early voting mark-off. At State elections, that doesn't extend to the mark-off of electors who use declaration votes, such as absent or enrolment. Currently, election day voting is not supported by electronic mark-off at State or local government. That's in line with the conduct of Federal elections, as well, which use a manual mark-off on election day as well.

We support the future introduction of election day electronic mark-off. The benefits are considerable: a more streamlined voter issuing process, the ability to view whether a voter has voted already by another channel, data insights for us at HQ on voter flows through polling places and so forth to improve our service delivery in the future, ballot paper monitoring and stock monitoring, and streamlined ballot paper reconciliation processes. So we definitely see merit and we are supportive of electronic mark-off for election day. However, this would require a considerable investment from the New South Wales Government because we will have to increase our information—

The Hon. CHRIS RATH: The number of computers, yes.

MATTHEW PHILLIPS: Yes, computers, laptops. We'd have to lease another probably about 16,000 to 18,000 laptops to do it, plus there are real issues about connectivity in some of those places, so it may not be viable. Connectivity is one of the real issues confronting the broader rollout—not to say that it can't be addressed, but it is an issue—and then there's testing. In that regard, I should note the feasibility of a trial of election day electronic mark-off for the 2027 State election is part of our digital modernisation program. It is one of the initiatives we're looking at and, if funded, we'll be looking to roll that out. I should just note that we did undertake a pilot project for the State by-election in 2016, but we haven't got funding to roll that out more broadly. But we definitely are looking at a trial at the State general election in '27 if we get the digital modernisation program business case funded by Government.

The Hon. CHRIS RATH: Another issue is overseas voting. It's obviously a source of some frustration from people who are travelling overseas during the election period and might even miss the pre-poll time and the postal vote period. I know you mentioned it in your submission, but can you outline what you're proposing and how we can increase the franchise to those people who are overseas at the time of the vote?

MATTHEW PHILLIPS: Yes, I will get Ms Summerell to go through the details. But just in terms of overseas voting, I should note that we worked closely with the Department of Foreign Affairs and Trade and Investment NSW in the lead-up to the 2023 State election to explore attendance voting at several key overseas locations. Investment NSW has got a number of standalone offices but not all are resourced on a full-time basis, I understand, or at least at that time, so they couldn't facilitate voting. It was deemed operationally difficult. DFAT did not support the establishment of in-person voting for the State general election. However, after much consultation and arm-twisting, they did agree to offer postal vote collection services during office hours from Monday 20 March to Friday 24 March. They were in missions including Berlin, Hong Kong, New York, Ottawa, Paris, Rome, Singapore and The Hague. I might just refer to Ms Summerell to provide further advice on how we catered to and served our overseas electors. Andrea?

ANDREA SUMMERELL: As the acting commissioner mentioned, we did work very closely with DFAT and Investment NSW. We were seeking in-person attendance voting overseas. I think the timing of the 2023 election—we had just come out of the COVID period, where there was a minimising of the number of attendance voting locations overseas. I think that hadn't been stood up again. We are working closely now with the Australian Electoral Commission, which had a lot of success with the recent referendum, to have a broader international attendance option available for that, and we will definitely be planning for that for 2027.

For 2023, what we were able to offer is a small number of postal drop-off locations in overseas locations—a small amount. Obviously, that did allow some electors to drop their votes off, but others were required to get their postal pack returned by post or by courier service. All of the postal packs we issued for the 2023 State election we did distribute by courier. We have a very short timeframe, as I mentioned before, so we used couriers to make sure that as many packs as possible could reach overseas electors and allow them to vote by election day. But it continues to be a challenge for us, and one where we're going to try to leverage the

connections that our Federal jurisdictions have so that we can offer a broader service in the future. I would like to take the opportunity to thank the New Zealand Electoral Commission, which was very supportive and had three attendance locations for the period of pre-poll for the 2023 election. That was a really great partnership.

Ms CATE FAEHRMANN: I want to bring up an issue that is in one of the submissions that has come to this inquiry. They haven't appeared as a witness, but the submission talks about the behaviour of Electoral Commission staff at some of the polling booths. In Pittwater, a booth worker suggested that Electoral Commission staff were instructing voters, including him as he went in to vote, that they only have to number one box. He says in his submission that when he challenged that, he was told that that instruction was taught to all staff in training by the supervisor. Further in his submission he suggests that afterwards it was confirmed that that was taking place at other booths and that electoral volunteers and staff were saying, "Just vote 1." Can I get a comment on that, in terms of the training? I understand what's on the ballot paper and, clearly, the ballot paper instruction isn't that. Firstly, can you confirm that those types of complaints come into the Electoral Commission? What has the response or reaction been?

ANDREA SUMMERELL: I can take that question. We hear messages come into our candidate help desk and into our staff support desk where election officials are giving incorrect instructions to electors. In those cases, we send direct messages to all the staff that are in a particular polling place to reinforce what we provide in training, which is that whenever issuing a vote—and it's actually on an issuing card on every single person's desk. We inform them to advise the elector to read the instructions on the ballot paper, which obviously is the guidance that you must vote 1 and then you can provide further preferences to as many candidates as you wish.

We reinforce that throughout the early voting period and on election day but, as we have mentioned before, with 25,000 staff being trained for the one day, some of our messages that we reinforce in training do get missed. That's why we try and do at least three SMSs out to staff each day of voting to try and reinforce those things that we hear at our help desk. We do encourage candidates, if they hear that our election officials are giving incorrect information, to contact the candidate help desk and our election support help desk, and we can do that direct messaging, to make sure we're reinforcing the correct procedures.

The Hon. BOB NANVA: There is quite an onerous compliance burden with respect to requirements of the Electoral Funding Act, including compliance requirements in order to receive administrative funding. I know it was a significant issue for major parties but I can only imagine it's felt more acutely by minor parties and Independents. Does the Act provide the commission with any discretion with respect to how it approaches the compliance requirements relating to administrative funding, particularly in relation to Independents and minor parties?

HUGO BERGERON: When you are talking about compliance requirements, there are eligibility criteria to be entitled to receive public funding. Obviously, that's lodging your disclosure. In the case of a party, they also need to lodge their annual financial statements to be eligible to receive the payments. The public funding scheme, including the Administration Fund, are a reimbursement scheme, meaning that the commission needs to be satisfied that that expenditure is, in the case of the Administration Fund, administrative expenditure and that it was incurred in the right period and may be reimbursed. The commission must administer the public fund as legislated. The only discretion of the commission is to determine that something is or is not an administrative expenditure and, if it is not an administrative expenditure, it cannot be reimbursed.

The Hon. BOB NANVA: Would you accept that the administrative burden in order to receive administrative funds could be fairly significant for Independent MPs without a party apparatus or even minor parties without disclosure teams and chief financial officers? It could be a fairly significant burden in order to receive those public funds.

HUGO BERGERON: What Independents have to do is to essentially lodge a claim and accompany that claim lodge with vouching, which is essentially invoices for that expenditure. Obviously, we might have a question as to the nature of the expenditure and of why it would be incurred or why it was incurred. I understand there is a burden in meeting or preparing the claims—that's for sure. However, any expenditure incurred in complying with those obligations would be expenditure that would be claimable from the Administration Fund. Historically, most of the parties tend to claim well above their maximum entitlement. Whereas, for Independent members, historically, a lot of them have not claimed their full maximum quarterly entitlement because they did not incur enough expenditure. It would seem to imply that Independent members could spend more money to help them prepare and lodge their public funding claims.

The Hon. BOB NANVA: In relation to the Administrative Fund, am I right in saying that it's currently capped to 25 MPs in the Parliament and the funding is capped to an amount?

HUGO BERGERON: For political parties, the maximum entitlement is based on the number of elected members endorsed by the party, and it is capped at 25 elected members. For those 25 elected members, at the moment, it's just over a million dollars per quarter of funding for a political party that has 25 or more elected members.

The Hon. BOB NANVA: Accepting that number is a policy question for government. Is the commission aware of any reason why that number is capped at 25? Is there a policy underpinning that that the commission is aware of? It seems a fairly arbitrary number.

HUGO BERGERON: It has been the case since the Administration Fund has existed in its current form. I'm not aware of the policy intent behind that at that time.

MATTHEW PHILLIPS: We could take that on notice, if you would like.

The Hon. BOB NANVA: I would appreciate that.

Mr TIM JAMES: You might wish to take this question on notice, without wanting to pre-empt it. ICAC Commissioner Hatzistergos and I had a discussion this morning which you might like to reflect upon, pertaining to third-party campaigners, particularly the question of the extent to which political parties generally are, certainly from my experience, very focused upon the differences jurisdictionally, namely the State-based laws and requirements and the Federal laws and requirements. My own party is very particular about event invitations and accounting and so on and so forth for State and Federal. I'm not so convinced that third-party campaigners are doing that. What I'd like to know is the extent to which there are reviews, compliance activities and investigations in relation to those third-party campaigners so that there is truly a level playing field. We can all observe the rise in relative investment and power and growth in third-party campaigners out there in the marketplace.

HUGO BERGERON: There are two things. We do receive allegations of unregistered third-party campaigners during election events. These are addressed as soon as we receive them, in terms of assessing whether they are or we believe they are at the time a third-party campaigner, and asking them to comply with their obligation, which is essentially to register and keep a campaign account and all of that. And then we would look at any breach subsequently for the purpose of potential enforcement action. That's one thing.

For those entities or persons that register as third-party campaigners, we have a program of audit of disclosure for compliance with the Act. We look at, obviously, their disclosure against the information they provide with their disclosure, but also against tools. For example, we have some social media platforms that will publish the amounts spent by a certain person and entity per message. We do cross-reference these as part of the audit. We also, during a campaign, gather information. We have teams of investigators on the field. If there is material being displayed, we often take photos of that material just to make sure that those items of expenditure are actually being disclosed. There are a number of measures we take to make sure that third-party campaigners and parties and candidates and groups comply with their obligations.

Mr TIM JAMES: What appears to be the common practice out there among third-party campaigners is that they're seeking donations seemingly under the bounds of Federal law but increasingly they are participating at a State level. Obviously, we would need to know that they are having that separation, if you like, of State-based funds relative to Federal-based funds and if they come in Federally and then somehow they get washed across to some State-based campaign purpose. I would like to get some more detail on that, if I might.

HUGO BERGERON: Third-party campaigners are allowed to campaign with their own funds—so funds that they've gathered from other activities. Where they do receive a donation specifically for a State or local government campaign, they would need to disclose those donations received, and those donations are subjected to a cap. If you look at the significant third-party campaigners, a good proportion of them are unions and most of their revenue comes from the members fee that they charge to their members. Other types of third-party campaigners are organisations that are politically involved and have various sources of income. We do look at the sources of income of those entities to see whether there's a potential that they might be funded specifically from donations for the purpose of campaigning at a State or local government election.

Mr TIM JAMES: Did I understand you correctly that you were saying that, in effect, if you're a third-party campaigner, you can use your own funds. It's only if you receive a donation for campaign purposes that it must be put into some sort of separate fund, State and/or Federal, but if, in effect—to use your words—they're using their own funds, that can go any which way. Have I understood you?

HUGO BERGERON: Yes. They can use funds that they generate, as I said, from their members, that they generate from investment.

Mr TIM JAMES: Including by donations?

HUGO BERGERON: If it's a donation, if the donation is made specifically for the purpose of a State or local government campaign, that must be disclosed.

Mr TIM JAMES: But if the donation is made in general terms from, let's say, it's GetUp! or Climate 200—there's a range of organisations out there—you're saying they can use those funds as they see fit for a State-based campaign and that would not trigger—pertaining to those donations, because they were made in the more general sense—any particular disclosure requirements or otherwise?

HUGO BERGERON: Yes.

Mr TIM JAMES: Is that right?

HUGO BERGERON: Yes. Unless you have, as I said—I will take the question on notice because I have to refer to the particular definition of "donation" for a third-party campaigner.

The Hon. ROBERT BORSAK: Tim, that's why Holmes à Court was in here wanting the cap lifted.

MATTHEW PHILLIPS: We'll take that notice.

Mrs SALLY QUINNELL: As someone who worked for the Electoral Commission before I got involved in party politics, I understand the constraints around the incredibly long day that election day is for workers. We had a couple of situations in my area where our pre-poll location—our early voting location—was not a location on election day. I think that's a little bit unusual. We also had the situation where a couple of places that usually get larger numbers of voting—it was a strange situation—in the town itself, where people did not vote in the locations that are normally large places and they went elsewhere but there was no capacity for any staff to move location.

We had some places that completed their counting extremely quickly and very, very early and those staff then went home, rather than them transferring to somewhere else where there was an influx of votes or an unusual amount of votes. The whole preface is to ask: If we're talking about opening early voting and then counting at 6.00 p.m. or having some of our smaller places—obviously, in places like Barwon this is not going to be able to happen because you're talking kilometres. We had one polling location that was 15 minutes away that had completely packed up by 8:30 p.m. The staff went home and 15 minutes away there was somewhere that was still counting at midnight. I'm wondering if there's a capacity to get staff, if they do finish early, to move and help out?

MATTHEW PHILLIPS: I will ask Andrea Summerell to address those issues. To preface those remarks, I would like to say thank you for working for us. We need in excess of 25,000 people to work for us on election day, so hopefully your experience was a good one and you're encouraging others.

Mrs SALLY QUINNELL: I think everyone should do it because I think you understand the process a lot better once you have.

MATTHEW PHILLIPS: Agreed. Andrea can go to the points with respect to teams moving between. Ms Summerell will address those issues.

ANDREA SUMMERELL: I think they're really good ideas. There are some learnings that I'm reflecting on from the recent referendum—the Australian Electoral Commission's conduct of that election—where they were moving towards more counting hubs. Not only does this address the issue we have with staff working, as you say, a very long day—they're there from 7.00 a.m. and after 6.00 p.m. we're asking them to do all these kinds of cognitive tasks and count. I point out that the AEC have a lot more resources and they have these great, as I said, operational centres, but I think there's real merit in being able to have some really well-located hubs that ballots can be brought to. You can have count teams and, as you say, you can bring the numbers in and flex and reduce as you need to.

You're right, at the moment we appoint staff to a venue, they stay at that venue, they complete the count and then they leave. It is really a very different experience if you're at a polling place that issues 500 votes versus 4,000 votes. We do adjust the staff numbers, but the effort is definitely not equal throughout the districts. I'm exploring that both in relation to speed of count but also work health and safety issues and efficiencies that we can introduce. So that is something we would look to and plan for for 2027.

MATTHEW PHILLIPS: I would add to that that work health and safety was a focus for the Electoral Commission for the SGE—the State general election—in 2019 and then again in 2023. We established a set of principles around that to recognise that staff are there for a long period of time and put in place some principles around that, including not working more than six days and so forth for those that are there for a longer period but also for election day staff, that they would not work past 11.00 p.m. on election night, counting to cease at 10.30 p.m. and so forth. Again, this is all about ensuring the work health and safety of our staff.

Mrs SALLY QUINNELL: I wanted to very briefly ask what sort of innovative job advertising is being done. Anecdotally, there is a bit of a perception in some areas that have spoken to me about it being very much the same people every time. Also, unless you know someone, you don't know when the jobs go out, and unless you're looking for a job, you don't know that the jobs are out there. So anyone who works full-time who's happy in their role doesn't know to look for a job. I'm wondering in this new market what sort of innovative job advertising there is.

MATTHEW PHILLIPS: Advertising for getting an election day workforce of 25,000-plus is challenging. We have a multi-pronged approach around sourcing those individuals. Yes, you're right, the same people—they refer to themselves as "election tragics"—turn up every election, whether it be local, whether it be State or whether it be Commonwealth elections. Without them we would find it very difficult, given their knowledge and also their commitment to elections. Particularly the focus has been around youth. We are getting more young members of the community—as long as they're on the roll, of course. It's a precondition.

We target social media channels, as well as traditional forms of media. We do a lot of radio around election times, and that's already kicked off. We've just announced the recruitment drive for the local government elections in September. We do a lot of radio, particularly in regional and rural areas, to ensure that we've got staff to cater to those areas. We get a lot of people putting in for metro areas and the like, but those regional and rural polling places and voting centres can prove challenging at times, and at times we have had to close because we couldn't get the staff. We use a whole range of means. Our website and we do a lot of post and social media and so forth around getting that workforce in. We're also encouraging members from the culturally and linguistically diverse communities, those individuals living with a disability, and the like, and Aboriginal and Torres Strait Islanders as well.

We've had a focus on recruiting members of those communities to work for us because, ultimately, we want a workforce that reflects our community. We do spend a lot of time and effort in attracting people. I should note that we do pay a reasonable amount for the day's work and when we target universities and TAFE students, as we do, I think they're very much surprised by how much we actually pay. We'd like to get them in early, those students, so they can stay around for the longer term. We spend a lot of time and effort in the recruitment process to ensure that our election workers, one, reflect the community and, two, are able to staff every polling place and voting centre, whether it be early or on the day as well. I don't know if Ms Summerell would like to add, Chair.

ANDREA SUMMERELL: No, I have nothing much more to add, Commissioner, but it is a challenge and we do speak to our returning officers about that approach of making sure that they're not assuming that someone has to have electoral experience to be able to be appointed as an election official. That's why we have great online training and summary cards at our centres, so the job is easy to comprehend. It's something that we speak to our returning officers and say, "You need to work towards having a percentage of people who've never worked before, so that we can continue to build that, which is really important to us."

The CHAIR: Commissioner, I was wondering if I could ask if you'd take on notice submission No. 7 that we've received. It concerns electronic enrolment issues between the Commonwealth and the State. I wonder if you could have a look at that and then come back with a response.

MATTHEW PHILLIPS: I'm more than happy to take that on notice, Chair.

Mr NATHAN HAGARTY: The member for Blacktown wants me to ask this one in terms of additional locations. There are plenty of examples of this where you get a booth and it gets to around 2,000 to 3,000 voters. The seemingly logical thing is to find a location somewhere close by and open that, but humans being humans, they go to the same school to vote that they've been going to for 20, 30 or 40 years because they want their democracy sausage and they might have got 3,000 votes last time but end up getting 2,500 votes, and this new location only gets 500 whereas maybe the assumption was they'd get 1,500 each. Is it not more efficient to additionally staff that big booth rather than open two and see one probably overstaffed? Is that a consideration?

MATTHEW PHILLIPS: Chair, if you don't mind, I would ask Ms Summerell.

ANDREA SUMMERELL: It is a challenge and I think what you've represented there is something that we have seen historically. We work closely with the Australian Electoral Commission to replicate venues. We are both looking at trying to have a ceiling that is in place in some of those large polling places. We know that in relation to counting on election night, the larger the booth it does become more challenging, and sometimes more staff doesn't necessarily assist with that issue.

But, as you say, voters are creatures of habits, and adding another venue does not always work. We always, after an election, reflect on the venues that we've had, what the voting numbers have been and whether we need to make any changes going forward, and we work closely with the Australian Electoral Commission on

that. But it is a challenge in making sure that our venues are not too large. But also, then, changing voting patterns is a difficult one, as you say.

Mr NATHAN HAGARTY: We can get those votes counted more quickly if my friends in the Council agree to the proposition that we count them later on and don't count them on the night, as we heard earlier. There are solutions to many problems there.

The Hon. SAM FARRAWAY: I don't really think people on election night really do care which Council votes are getting counted.

The Hon. CHRIS RATH: Yes, and it takes forever to get our results anyway.

The Hon. SAM FARRAWAY: Yes.

Mr NATHAN HAGARTY: Exactly.

The Hon. CHRIS RATH: Provided we are on a unity ticket on that one.

The CHAIR: And provided we've had a democracy sausage during the day. Are there any last-minute questions? There being none, can I say thank you to all of you for appearing today. You'll be provided with a copy of the transcript of your evidence for corrections. Committee staff will also email any questions taken on notice from today and any supplementary questions from the Committee. Thank you very much for attending. That concludes our public hearing. I would like to again thank the witnesses who appeared today. I also thank Committee members, Hansard, the staff of the Department of Parliamentary Services and committee staff for their assistance.

(The witnesses withdrew.)

The Committee adjourned at 16:25.