

**REPORT OF PROCEEDINGS BEFORE**

**JOINT STANDING COMMITTEE ON ELECTORAL  
MATTERS**

---

**At Sydney on Monday 6 June 2005**

---

**The Committee met at 10.00 a.m.**

---

**PRESENT**

Ms M. F. Saliba (Chair)

**Legislative Council**

The Hon. Dr A. Chesterfield-Evans  
The Hon. A. R. Fazio  
The Hon. J. A. Gardiner  
The Hon. D. T. Harwin

**Legislative Assembly**

Mr G. Corrigan  
Mr P. R. Pearce

**CHAIR:** I understand, Mr McFarlane, that you've been given a copy of the Legislative Assembly Standing Orders 332, 333 and 334 in relation to the procedure for the examination of witnesses by the Committee?

**Mr McFARLANE:** I have.

**SCOTT HAMILTON McFARLANE,** State Director of the National Party of New South Wales, Level 5, 30 Carrington Street, Sydney, sworn and examined:

**CHAIR:** The Committee have received a submission from your organisation. Is it your desire that this submission form part of your formal evidence?

**Mr McFARLANE:** Yes, it is.

**CHAIR:** Would you like to give a brief statement?

**Mr McFARLANE:** Yes, please.

Firstly, thank you very much for the opportunity to lodge this submission and appear before your Committee. The Nationals in New South Wales believe it is extremely important that the issues you have raised and the Committee's terms of reference are thoroughly investigated and where there are problems solutions found and quickly implemented.

For the record, I did not hold the position of State Director of the Nationals during the 2003 State election. I've only recently take up this appointment and the information contained in the submission before you is based on details provided to me by the former State Director of the Nationals in New South Wales.

The administration of State election campaigns is fundamental to our democracy. That administration must be robust, fair, timely, accurate and above all else transparent. The Nationals in New South Wales have concerns, as outlined in my submission, that there were major issues which affected the proper administration of the 2003 campaign. Some of these concerns may seem minor while others should be regarded as serious, however, it is my view that any discrepancy undermines confidence in our democratic system. Those inconsistencies and errors led to frustration, confusion and impacted on the efficient operation of our campaigns in the electoral system generally.

Specifically my submission points to, conflicting advice on statewide how to vote cards and where advice was given by SEO staff at a briefing in December before the election, and then confirmed by our staff after the writs had been issued, we were only told 15 days prior the poll that this advice had changed due to so-called complications with another political party. Logistically we could not change our strategy, which was based on the previous advice potentially giving another party an edge in this campaign. We must have a level playing field where consistent advice and the rules is issued and then policed.

Inconsistent and shoddy advice on production of postal vote applications relating to the use of the SEO logo; the omission of the National's candidate from a Murray-Darling electorate newspaper advertisement, listing candidates and polling places, this advertisement appeared the day before polling day so there was no way of correcting the misinformation. The ability of a candidate for Barwon to change the name of the party that they were standing for after nominations had closed; the lack of consistent advice from the SEO leading to our staff automatically calling twice to ask for the same information, this often resulted in differing advice; an administrative error that led to the Nationals being omitted from the SEO's web site as a registered political party, leading to media speculation that the party had been deregistered.

Two further issues that have been raised with me during my travels across the State since taking up this role to illustrate the lack of consistency in the 2003 election are as follows:

Firstly, a sign advertising a candidate for the Tamworth electorate attached to a building on a major traffic route in Tamworth was oversized, clearly oversized. A local Nationals member raised the issue with the local returning officer, firstly, by letter and then followed that by several phone

calls, yet it took six days for the offending sign to be removed.

Secondly, the lack of notification by the State Electoral Office of how many gates or entrances would be open at each polling place. This lack of information makes it very hard for local campaigns to allocate volunteer resources, particularly in country electorates where towns may be several hours drive from each other. This is surely something that can be addressed very easily.

All of this is not to say that every staff member of the SEO returning officer and polling official are to blame. There are many very professional and hard working officials who do a great job under difficult circumstances. It would appear to be the lack of resources, training, flawed processes or legislation and communication breakdowns that are the root causes of these many issues we confront.

I note in the summary of the Electoral Commissioner, Mr Barry's submission, that he has no power to direct district returning officers once they are appointed and the necessary manuals have no standing under the Act. Mr Barry also noted that there are problems with the postal voting system in rural New South Wales in that some areas are not provided with a daily postal service. There must be some obligation on the SEO to ensure the rural voters receive their postal voting material before Election Day. This may require negotiations in consultation with Australia Post but we can't bury our heads in the sand on this issue. The Nationals in New South Wales don't believe that it's productive to dwell on failings in the past, however, lessons must be learnt from those failures and solutions quickly implemented.

I've recently received a draft corporate plan for the SEO between 2005-07 from the Electoral Commissioner in which I note that the SEO's mission is defined as providing high quality election services that are impartial, efficient and in accordance with the law. To achieve this mission, the lessons learnt from 2003 must be heeded and problems fixed. To that end I wish the Committee well in its deliberations and in its formulation of recommendations. Thank you.

**CHAIR:** Thank you. I would like to just open it up for questions. In your statement there you were talking about being omitted from the advertisement that was published in the Murray-Darling electorate the day before the election. From your dealings with the SEO, what would you consider to be the cause of this?

**Mr McFARLANE:** As I say, I've only been in this role just a short time so I may not be able to go to the full extent. I haven't had a lot to do with the SEO at this stage but that particular advertisement, there was obviously a clerical error there and it was a critical one being on the day before the election, so there was no option to correct it and that's very concerning to us and the people who read that newspaper could be under the impression that there was no National Party candidate for that seat.

**CHAIR:** You also in your submission note that you received conflicting and inconsistent advice from the SEO prior to the 2003 election. You've outlined a number of these inconsistencies that caused problems. How would you assess the ability of the SEO to perform its functions then, given the number of issues that the Nationals had?

**Mr McFARLANE:** Given the performance in 2003 I think there's certainly room for improvement. There's certainly obvious failings there and may be they're systemic failings that need to be addressed. As to what has happened in that period since then I'm not a hundred per cent sure. It gives me heart that we've got the draft corporate plan out there and that's along the right directions but we need to ensure before 2007 that all those inconsistencies and problems are ironed out so that we're all on a level playing field.

**CHAIR:** Any questions?

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** You've got the questions, have you?

**Mr McFARLANE:** No, I don't.

**CHAIR:** No, he doesn't. You can just ask questions. Some of these have been addressed in

his opening statement.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** You referred to the clerical and administrative errors the SEO made during the election campaign period, what do you think is the cause of this?

**Mr McFARLANE:** I think it's probably a lack of resources and a lack of direction and it's something that's, as I say, certainly needs to be addressed in order to get it right. I noted in one of the other submissions it was suggested that a particular person be responsible for postal vote applications, et cetera, at the SEO. I think that's a good accountability mechanism in terms of having someone responsible for each particular issue.

**The Hon. Dr A CHESTERFIELD-EVANS:** If you've got inconsistencies in advice though putting on more people you'd be likely to get more inconsistent advice, aren't you?

**Mr McFARLANE:** No. It's about getting the structure right, and I'm not necessarily saying putting on more people, maybe it's reorganisation but it's about ensuring that there's proper lines of communication and duties within the SEO and that that's communicated effectively to people outside, so they know where to go.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** But you don't want it be so centralised in Sydney I gather. You want more local autonomy, don't you?

**Mr McFARLANE:** Decentralisation is certainly the platform in the National Party but certain functions are required to be centralised and that's on an individual basis as we go through.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** I mean if you've got more people more decentralised, do you think you're going to get more consistent advice as well?

**Mr McFARLANE:** Not necessarily, I haven't said it should be more decentralised. I just think that the communication should be better and distributed more widely and more consultation.

**Mr CORRIGAN:** I think he's arguing the same point that a lot of parties have argued that there needs to be more resources for the Electoral Office and better training and better manuals so that there's consistent application of the regulations across the election.

**The Hon. Dr A CHESTERFIELD-EVANS:** That's what I'm trying to get him to say.

**Mr CORRIGAN:** He said it.

**CHAIR:** He said it in his opening statement.

**Mr CORRIGAN:** One of the things you said in your address and I'll ask the Electoral Commissioner when he comes in because it's a problem that we all have about oversized posters and one of the things that nearly drive you mad in election campaigns is complaining to the local returning officer about your opponents. In that case in Tamworth, do you know whether the council had to remove the poster because sometimes stuff on telegraph poles up high the returning officer has absolutely no ability to deal with that?

**Mr McFARLANE:** No. I was told about this on the weekend and the person actually also complained to the business owner and told the business owner that the sign on their building was oversized and it was a problem and that didn't get any action either so, yes, it did take that full six days which can be a problem at a critical time in an election campaign, as you're fully aware.

**CHAIR:** In your submission, you imply that the staff of the SEO lack political neutrality, what actions have led you to doubt the political neutrality of the SEO?

**Mr McFARLANE:** Certainly questions at the time were raised with my predecessor, and people on the ground particularly, questioning why and how that situation occurred and, as I say, my submission states that this type of inconsistency can damage the SEO's reputation as to its political

neutrality. I think that the root cause of this is inconsistency and it leaves the gate open for questions to be raised along those lines, so it's my view that those inconsistencies need to be tackled and the rules policed fairly and then we could all have a level playing field and it wouldn't arise.

**CHAIR:** Are you in a position to say whether these problems are more pronounced or only occur in regional and rural electorates?

**Mr McFARLANE:** I think things such as clerical errors can occur anywhere and certainly impact on metropolitan electorates as much as they do in country electorates but, I just want to make the point, that electorates in rural and regional areas are geographically much larger and we're talking about deadlines for printing, postage times, and so forth, are far more than in the city and that requires us to be highly organised and to ensure that that advice that we've got is right because, where someone in a metropolitan campaign might leave it a couple of days to get the printing done, we'll get it done as soon as we get that advice so that's it's distributed on the ground. I think that's probably the difference.

**The Hon. JENNIFER GARDINER:** Scott, one element in your submission relates to the postal voting problems, particularly in rural and remote areas. You may be aware that just after the last State election the National's candidate for Murray-Darling did a radio interview and there were a number of phone calls, emails and verbal reports from electors who said that even though they were on the general register of postal voters, so they'd done the right thing, they were remote voters, they were meant to be served by this expeditious means of getting their votes recorded but in fact they didn't get their postal voting material until one or two days before polling day or some of them got them on the Monday after the election, and because most rural postal delivery occurs only one or twice a week, obviously there wasn't satisfactory time for them to fill in the ballot papers; get them witnessed and return them by Australia Post.

There were others who contacted the SEO because they wanted to vote and they were informed that their votes would be accepted up until the Wednesday after the election but apparently there was some conflicting advice on the official State Electoral Office web site which indicated to them that that was pointless, so they didn't go down that track and there were others who were so keen to get their votes in that they drove up to 100 kilometres to post their ballot papers at the closest post office, which of course defeats the purpose of having a general register of postal voting and defeats the purpose of postal voting.

**Mr McFARLANE:** Indeed.

**The Hon. JENNIFER GARDINER:** They had to drive 100 kilometres and there were others who've claimed that they never received their voting papers at all So, would you not agree, that that state of affairs is - not only is it worrying but regrettably it's been going on for a very long time and it's about time it got sorted out?

**Mr McFARLANE:** I think it's highly concerning and I think it's a fundamental right to have the opportunity to cast your vote and people who wanted to vote missed out voting in that situation and I think it's very serious and, as I alluded earlier, surely there is something that can be done by the SEO and Australia Post in conjunction to make it happen. I know it's very difficult when dealing with large distances and remote properties and so forth but that's not to say that those people are any less deserving of having their materials and being able to cast their vote as they wish.

**The Hon. JENNIFER GARDINER:** Scott, just going back to the advertisement with the National's candidate person missing, I notice also that there's a typo in that, that Country Labor - is spelt with a "U" in it. Can you understand people being very cynical in terms of the question of political neutrality if the Electoral Office itself leaves out the name in the official advertisement to the constituency, that there's an election on; these are the candidates; and these are the polling booths, and if a particular political party or any candidate is missing from the ad from the State Electoral Office, that naturally in some people's minds raises the question, is that just a typo or is it something more sinister at work?

**Mr McFARLANE:** That's right. That can certainly be read into it and people on the ground would be very suspicious in terms of seeing that and I make the point that the Nationals weren't the

only candidate left off that advertisement, there was one other as well, and whether it's a clerical error or not it always, as I said, leaves the gate open to those insinuations that it might be political bias and that can cut both ways on both sides of politics. I think we've just got to ensure that we've got a very, very high standard of copy checking and making sure these things are right, I mean that is the role of the SEO to get that right. I think that's something that we really need to make sure happens and the processes are in place for that to happen.

**CHAIR:** I imagine if it was an issue of them not being neutral, that it would have happened across the state rather than in one electorate or another as far as advertising is concerned.

**The Hon. DONALD HARWIN:** Except that that's the responsibility of each district returning officer, isn't it, to produce that ad?

**CHAIR:** I don't know if it is the district returning officer or the State Electoral Office.

**The Hon. DONALD HARWIN:** Anyway, we could perhaps ask that this afternoon.

**CHAIR:** It's a question that can be - yes. Geoff.

**Mr CORRIGAN:** Scott, I congratulate you on the succinct submission and giving good practical examples but it mainly deals with the administrative side of the election. Do the Nationals have any view with a voting method, for example, a random sampling, that has to take place why can't they have a full count and so on?

**Mr McFARLANE:** This is for the upper House ballot.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Yes.

**Mr McFARLANE:** In terms of random sampling, I think the Nationals would support the elimination of that to give people a greater confidence in the system. Having just started in this role though I haven't considered any other particular method that may be better but I'm happy to have a look at that and come back to the Committee from the National's perspective.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** As a significant minor party would you support multi-member electorates?

**Mr McFARLANE:** Once again, if I could take that on notice and come back to you.

**CHAIR:** I don't recall seeing that question there.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** We may ask whatever we like.

**CHAIR:** Any other.

**The Hon. JENNIFER GARDINER:** Scott, the question of How to vote cards and statewide How to vote cards as we call them, and the current prohibition on any candidate or parties advocating preferences for other parties in another house, for example. Do you have a view on that and would you support an amendment to the legislation, so that with all the appropriate checks that such advocacy is genuine and agreed to by the various parties, would you agree that that would be a way forward in relation to the How to votes?

**Mr McFARLANE:** I would, yes. I think it should be seriously looked at.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** As the party that it is said that preferential voting was created for, would you support compulsory preferential voting as opposed to optional preferential voting in New South Wales?

**Mr McFARLANE:** Can I take that on notice and come back to you as well please?

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** You won't forget.

**Mr McFARLANE:** No.

**The Hon. JENNIFER GARDINER:** I can tell you after what the answer will be.

**CHAIR:** If I could just ask could the Nationals be supportive of moves to register How to vote material with the district returning officers rather than the Electoral Commissioner as is currently required?

**Mr McFARLANE:** I think it probably should be registered with both. It probably should be controlled centrally but that material should certainly be available locally.

**CHAIR:** Would you have any issue with the material being made public?

**Mr McFARLANE:** No.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** You seem to want to strengthen the hand of the SEO in the running of elections, would you support the SEO having more of the funding for political education, as opposed to the political parties, so that there's neutrality in the political education system?

**Mr McFARLANE:** I could take that on notice and give you a written answer on that one.

**CHAIR:** In your submission you noted that despite being a key stakeholder we rarely hear from the SEO and are not asked for input in operational matters. What sort of input would you like to see parties given?

**Mr McFARLANE:** Look as a key stakeholder of the SEO I would expect that the Nationals would be consulted and kept up to date with happenings at the SEO and, as I said earlier, to that end I welcome the draft corporate plan, which we've been asked to comment on by June 17, I think it is, by Mr Barry. I've been advised that when the AEC hold conferences periodically where the political parties are consulted and apparently in 1993 there was a conference in Hawkes Nest where a representative for each party and district returning officers were brought together and it was particularly focusing on close elections and they thrashed a lot of issues out and I think everybody came away with a greater understanding of how it worked, the processes, and so forth. So that's a potential idea I guess that the SEO could implement. I'd also like even our staffing at the various offices have more communication with the SEO to understand the processes and I think there's a lot of misinformation due to lack of communication out there and the more they explain things the better off we are all round.

**CHAIR:** I'd be interested to know, do you think if the rules were all consistent for State and Federal elections that this would assist parties and candidates?

**Mr McFARLANE:** I certainly do. I think there's room for streamlining some of the processes and bringing them into coordination and I think that would be beneficial for people on the ground particularly.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** You may be aware of the book written about electoral voting, do the Nationals have a view on that situation?

**The Hon. DONALD HARWIN:** Which book?

**Mr McFARLANE:** I'm not aware of the book.

**The Hon. DONALD HARWIN:** Don't answer the question unless he can remember the book.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** It was launched with great fanfare here in Parliament House by conservative forces dare one say.

**The Hon. DONALD HARWIN:** By Andrew Fraser, yes.

**Mr McFARLANE:** I'm not aware.

**The Hon. DONALD HARWIN:** I can remember, Arthur can't.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** You know the name but you're not willing to say it because you're like that. I'm sorry, I can't remember the name of the lady who wrote the book but it was launched, then it was relaunched last year from memory.

**Mr McFARLANE:** Can you define electoral rorting?

**The Hon. Dr AARTHUR CHESTERFIELD-EVANS:** It was called "Electoral Fraud in Australia" I think was the name of the book.

**Mr McFARLANE:** I can say categorically the National Party is against any type of electoral fraud. We've adhered to the law.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** The allegations were mainly made against the Labor Party in terms of rorting I gather, and also in terms of the resources of the electoral office to check registrations in things like new estates and other areas, that the checking of the electoral rolls was not frequent enough, thorough enough, or directed sufficiently in the areas where there were most likely to be demographic changes or, more critically, marginal seats. You don't have a view on that?

**Mr McFARLANE:** I think we all would like to see the electoral roll as up-to-date and as accurate as possible but the specific sections of the book that you're referring to I'm not familiar with.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** You don't have any quantitative opinions on how many people should be checked, how often, and what resources should the SEO have for that.

**Mr McFARLANE:** I don't have, no.

**CHAIR:** Do you think in the interests of accountability that the Electoral Commissioner should have a statutory requirement to report to Parliament on the administration of elections?

**Mr McFARLANE:** Yes, I think that's a good idea. It puts it in the public arena and it can be debated then in Parliament and, as I understand it from one of the other submissions, the Auditor General - it's a similar function to the Auditor General.

**CHAIR:** There was an issue raised at our last hearing, or the last day that we met, about the fixed terms of the Parliament. There's been a maximum period of three weeks for election campaigns from the issue of the writ to polling day. Would the Nationals be supportive of a statutory requirement for the writ for a general election to be issued on the day of dissolution to ensure that the maximum period is provided?

**Mr McFARLANE:** I'd say, yes. I guess the issue would be closing the rolls. If could take that on notice and come back to you with a written response, I'd have a bit more to think about it, thanks.

**CHAIR:** Any other questions?

**The Hon. JENNIFER GARDINER:** Perhaps the same, Scott, in relation to the closing date for nominations, which is usually the Thursday after the issue of the writ. We've received submissions that this date should be brought forward to provide a longer effective campaign period again. If you can perhaps deliberate on that and get back to us it would also be useful.

**Mr McFARLANE:** I could take that on notice as well, thank you.

**(The witness withdrew)**

**CHAIR:** I'm advised that you've been issued with a copy of the Committee's terms of reference and also a copy of the Legislative Assembly Standing Orders 332, 333 and 334 that relate to the examination of witnesses. Is this correct?

**Mr GREEN:** Yes.

**ANTONY GREEN,** Australian Broadcasting Corporation, 700 Harris Street, Ultimo, affirmed and examined:

I would like to make it clear that I am appearing as a private citizen and that nothing in my submission or in my evidence in any way reflects a view of the ABC who, to be honest, don't really have much of a view on the Legislative Council's electoral system.

**CHAIR:** Okay, that was my next question was to state your occupation and capacity in which you appear before this Committee, which has been done already. The Committee's received a submission from you. Is it your desire that that submission form part of your evidence?

**Mr GREEN:** Yes, it is.

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

**Mr GREEN:** I'll make an opening statement with agreement of the Committee. What I intend to do initially is - I'll make a number of points about the Electoral Office and the Electoral Act and then I'll move on to the Legislative Council. If it's agreeable with you, I'd like to make some preliminary remarks about the earlier matters before moving on to the Legislative Council counting system.

**CHAIR:** That's fine.

**Mr GREEN:** Then we can try and deal with - rather than go backwards and forwards between complex questions that might be an easier way of doing this.

**The Hon. DONALD HARWIN:** Do we understand you in requesting that we take questions relating to the first matters before you go on to the Legislative Council?

**Mr GREEN:** Yes. I'd rather do that because the Council's system can be very complex and I don't want to get bogged down on that first.

My preliminary remarks is that I've covered something like 35 State, Federal and Territory elections around the country in the last 15 years and while the Electoral Office in New South Wales has always been very helpful, very open, very willing to give information, they're clearly one of the worst resourced Electoral Offices in the country who tend to know their own Act backwards. They tend not to have been interstate to see how other Acts operate and, while always helpful, they often have had a lack of the right skills and the right people. Too much information about how things have run tend to be in the heads of the staff there, who've been there a very long time, and I always think haven't seen how other States operate, and the helpfulness that occurs in other States.

I think perhaps because in some of the southern States in particular, Labor was out of office for many, many decades and when they came to the office in the early 1980s they were very keen on creating an open Electoral Office and in some of the southern States it's a very different structure and a much more open Electoral Office which has had to deal with far more open politics with conflict between Houses on electoral change. So I think there are some historical reasons why there are differences in New South Wales. While this is not criticism of the staff there, who I think always work very hard, but they're stuck in an institutional barrier of an electoral office which is under-resourced and hasn't always been outward looking.

I mentioned in my submission of the issue of the divisional returning officers that has been engaged with me in the past is that, as a number of other people that work more closely with the Electoral Commission and returning officers themselves are aware of, the different interpretations you get and who are they accountable to. That always tends to be a problem with the Electoral Office

here.

I've mentioned that in State elections here it seems that preference counts are done on election night and then they all disappear and no-one ever sees them again. In the week after an election they continue to count but the Electoral Office itself has no knowledge of what the preference count is. All we ever get is, "You can ring the parties and they'll tell you what their scrutineers are saying." It's very odd that in New South Wales is the one State where you can't seem to get any preference counting information afterwards and that's just simply a matter of the procedures you do to do your distribution of preferences and keeping track of the votes and counting them by polling place and things like that. There are procedures you can do which are used in other States so that that information is available. It's not available in New South Wales because I think simply they haven't been and looked.

**Mr PEARCE:** This is lower House you're talking.

**Mr GREEN:** Lower House I'm talking about, yes. I made a comment about sighting of pre-poll voting centres and that was from my personal experience. The last State Election there was one pre-poll voting centre in the CBD, it was on the 11th floor of Town Hall house. It was hardly an easy place to find and you compare it with the Federal elections when they have a very large usually pre-poll voting centre at St Andrews House on the ground floor where you can find it. I just think that the pre-poll voting has been determined by the returning officer for districts; so in this area it was Port Jackson, it was at his office, and there needs to be more I think more central thought about the provision of pre-poll voting.

The paperwork in declaration voting, if you turn up to do a pre-poll vote you have to sign the form twice. You've got to state a reason; it's then ticked to state this is your reason for having a pre-poll vote. New South Wales is the only State that retains a written application for a pre-poll vote. In other States - in some States - they even just cross you off the roll and give you the vote and it goes into a ballot box. Other States maintain the declaration envelope but there isn't the double declaration that occurs in New South Wales.

The computing problems with the counting of the Legislative Council at the last election, I think they weren't as bad as indicated in the press but I do think - and I'll come to the random sampling afterwards - if there wasn't random sampling in the Electoral Act they would have been able to test those programs a lot better and there were all sorts of problems there.

I've raised the issue of the timing of the writs. If the election - the dissolution date is set for the last - I can't remember the exact date - it's Friday three weeks out, the dissolution is set, but then the Constitution, in a section of the Act which can be changed, specifies the writ must be issued within three days. That means that if the whole three days is taken the campaign is 19 days. That is as long as the election campaign in the Northern Territory, which has 25 electorates and only about 100,000 voters. New South Wales has over 4 million voters, 92 electorates and an upper House. It's very difficult to conduct an election in only 19 days. We can't change the complete length of the period because it's now embedded in the Constitution but we can change the clause which specifies the date for the writ and the writ can be issued the same day as the dissolution, it gives you an extra three days in the campaign, and would allow the sorting out of postal votes and given them and extra few days for postal votes. It's silly to have a fixed date election and a fixed date dissolution but the Electoral Commission doesn't know what day it can advertise for candidates because the writ isn't determined either.

Register how to vote material: I've raised that because it's just a peculiarity of New South Wales. If you're going to register how to vote material I see no reason why it should be secret until Election Day. The only reason to register how to vote material is to ensure that voters are not misled and what it seems that we've got in New South Wales is a set of procedures which seems to have become completely bogged down in the procedures to register the how to vote material rather than going back to the basic principles about why we register how to vote material - it's to ensure that voters are not misinformed, which is where the provision also about the backwards and forwards between the upper House and the lower House on how to vote cards. I think that should be removed because - and the gentleman who spoke before me from the National Party pointed out - the confusion that comes about with registered parties in the two houses of Parliament and whether they are or are

not the same party.

If someone in the Country Labor Party wants to recommend a Labor Party vote in the lower House, so a Liberal National ticket in the upper House wants to recommend a National in the lower House, so the Liberals and Nationals want to have different how to vote cards because they're standing against each other or because the Shooters Party are standing in the upper House and they don't have a candidate in an individual seat but there's an independent who supports their causes. I see no reason why they shouldn't be able to issue a how to vote card with all the requirements that meets the agreement of the candidates. It's not misleading the voters for such a how to vote card to be issued and therefore I don't see why it should be banned and it just becomes something which confuses people when they to lodge how to vote cards.

There is a discussion about whether things should be registered with the returning officer or the Electoral Commission itself. I think one of the advantages of registering it with the returning officer, if you can get standard procedures is that, if there is a complaint on a How to vote in an individual electorate the Commissioner is the first point of appeal and that's certainly how the Act works in Victoria. They're all registered with the returning officer who determines whether they're misleading or not and if a candidate has a complaint about this their first source of appeal is to the Electoral Commissioner who can review the decision. Certainly the information should be available. I think the restrictions on, between how to vote cards, should be lifted.

The question of third party how to vote cards: Environment groups or anti-abortion groups handing out how to vote cards becomes more complex. If you're going to ban them from being handed out, which is currently the case in New South Wales, that's fine, you've got to continue with the registration but if you loosen up the registration perhaps you should be allowing other parties, who aren't contesting the election, to also hand out material. It's not actually trying to mislead voters. The question should be whether a how to vote card is misleading. Of course if the Greens are standing and an environment candidate is handing out a different how to vote card with different preferences the Green candidate could say that is misleading, so with the third party material there is some serious discussion there about it and I certainly think there needs to be some loosening up of the rules on registration as they stand at the moment.

The remainder of my submissions then goes to the Legislative Council, so at this stage I'll take questions on the points I've raised so far before proceeding.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Quite a lot of questions about elections in general, if you don't mind, because you have a lot of knowledge quite broadly across different systems and possibilities. The political education funding, which funds a large part of political parties, do you think more of that should be actually given to the SEO to fund a more generic information campaign on political education?

**Mr GREEN:** The political education fund is an odd mystery to me, only political parties get access to it and it rather bemuses me and I'm not quite sure what it's doing there. It was an extra way of getting money to political parties and I think I'm quite happy to say that. It's certainly the case that the New South Wales Electoral Office has far less useful educational material available than any other State Electoral Office and, again, I've got these interstate annual reports for people to have a look at afterwards.

There is really obvious things like in other States they put supplements in newspapers showing maps of electorates, polling places, quite good information on how the electoral system works. When New South Wales has produced that it's generally been quite old-fashioned looking, it's not always been particularly interesting to look at, it's very old-fashion and all you need to do is look at their published returns compared to other States and you can see that there's not a lot of thought on presentation of that sort of material. Certainly other States do a lot more public education.

In terms of checking the rolls up, for instance, New South Wales leaves that almost entirely to the AEC in New South Wales. In other States the State Electoral Office does a bit more proactive work in terms of schools, chasing up driver's licences, finding people who have moved; that tends to be all done by AEC in New South Wales, in other States the Electoral Offices themselves do a bit more of that work. I certainly think in terms of education, skilled information, just voters ringing up

and saying, "What's the margin in my seat?" The State Electoral Office usually can't tell you because they never do anything.

I must say that - you'd all be familiar with the publications I do for the Parliamentary library, I've been doing it for the last 15 years - the fact I've been doing them has actually I think taken some of the pressure off the SEO for the last decade in dealing with some of that information. Many people have been able to get hold of that information through my publications in the Parliamentary library when really some of that should be available from the SEO. They always view publishing pendulums of things as being political, it's not necessarily political, it's just information but they're always very cautious about doing those sorts of things.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Do you think that they should have more money to explain things like optional preferential voting, for example, what it is?

**Mr GREEN:** Yes, they should do more education. I think one of the difficulties of optional preferential voting is that there's always concern about if you're explaining it too well, is that people then apply that to the Federal level where it's compulsory preferential voting. There is some concern about that but I think - I'm not sure what the ballot paper instructions are in New South Wales but certainly the ballot paper instructions indicate that you can fill in more preferences but I think the key thing that does occur is people tend to follow how to vote cards. Since 1991 the parties are putting less and less preferences on their how to vote card which is why the proportion of people indicating preferences has dropped off, it's because there's less preferences being indicated on how to vote material.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** If the political parties were running campaigns which said, "Just vote 1," which looked like it was SEO information, which in fact happened particularly in the Auburn bi-election from memory, the fact that the SEO had virtually no budget to explain the system meant that the entire voting patterns were being set by the political parties rather than by SEO informing the voters.

**Mr GREEN:** The SEO should distribute more material explaining how the voting system works and I don't think there was any material sent to voters at the last election. There was in 1999 because they feel they must write to voters after a redistribution and tell them what electorate they're in and there tended to be a small booklet come with that. I think there should be more of that. There should more of that sent. I don't think - if parties run a "Just vote 1" campaign, it's not for the Electoral Office to say "Just vote 1" is wrong because "Just vote 1" is a perfectly valid vote.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Yes, but in the absence of any SEO campaign because the political education money goes to the political parties, rather than the SEO, it does have considerable political implications in terms of the outcome of the election.

**Mr GREEN:** The how to vote cards are not funded from the political education fund, I don't know what is funded from the political education fund but I'm pretty sure it's not how to vote cards.

**The Hon. Dr A. CHESTERFIELD-EVANS:** No, that's true, it may go into the same bucket but it comes out of a different part of the bucket.

**Mr GREEN:** The Electoral Office needs to advertise this material before but if a party is going to run a campaign like that it's very difficult for the elect - it's not wrong to say, "Just vote 1," I mean it's a strategy which a party has adopted and it's not for the Electoral Office to run around saying - it's for them to say, you can fill in more preferences, it's your choice.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Do you think that more preferences gives a better outcome in terms of voter desires and intentions?

**Mr GREEN:** If voters don't have a preference then I don't see why they should be forced to fill them in. I'm a firm believer in optional preferential voting. The increasing informal vote we're seeing at Federal elections is basically caused by misnumbering, as people misnumber their ballot paper. I find it wrong that at the last Federal election in Greenway with 14 candidates the informal

vote was 11 per cent. Now probably three-quarters of those people were people who misnumbered their ballot paper and of those 80 per cent of them would have been number 1 for Labor or Liberal.

There's probably half of the informal vote in Greenway had a valid preference for a candidate who ran either first or second and their vote could have been counted but it was rejected because their preferences were wrong. I won't agree to a system - I don't agree to with a system that sees votes like that discarded which has got a voter's opinion on what they want to do with their vote but it's discarded because it doesn't have a preference. In Greenway there were votes for the Labor and Liberal candidate that were excluded because at the end of the count they didn't choose between Pauline Hanson and the Socialist Alliance and I've wrecked the spelling reform candidate. Because you've got your 13th preference wrong I don't see why your first preference should be disallowed.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** No. It isn't an intelligence test to Liberal or Labor voters, is it? You've said in your submission you've said that you would like the SEO to state the two party preferred outcomes in your submission. Don't you think the two party preferred is just a convenient wiping out of the alternate candidates for the two majors to make it a gladiatorial two person contest?

**Mr GREEN:** They do a complete two candidate preferred but there is great deal of interest usually in how the two party preferred count turns out, simply it's a bookkeeping device, most electorates finish as two party preferred contests, people like to know what the other alternative was, at the point of counting. In some senses in New South Wales you're pretty meaningless, if you go to Northern Tablelands and Port Macquarie and do a two party preferred count you find over half the preferences have disappeared. As exhausted because they've voted 1 for the independent and didn't give any preference, so it's not very meaningful. They have done it in the last two elections but it's just there for information, it doesn't wipe it out, it doesn't determine anything, it's not the result - I've appeared before South Australian court cases where they used the two party preferred to determine the next redistribution; they actually project forward using two party preferred and everyone takes this two party preferred as an absolute gospel in South Australia because of this procedure. It's not a gospel. It is just information and I think it's worthwhile having.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Isn't it just reinforcing the gerrymander of the single member electorates?

**Mr GREEN:** No. It can be really useful in revealing where there has been a gerrymander in the electorate boundaries.

**CHAIR:** So you believe that the SEO should consider the same, the two party preferred, giving the results by polling booths?

**Mr GREEN:** What they've done is in every election now they do a complete distribution of preferences in every electorate whether it's right or not. Having accumulated all the votes they then do that distribution. There are procedures that would allow them to do the distribution and maintain the preference count in every booth, so that in your electorate you can find out what the two candidate preferred is in every booth. In your case it would be a two party preferred count because it's the same as the Labor Liberal, in other electorates it's Labor verses Green or Liberal verses Independent, National verses Independent. I'm not sure. I'm not exactly sure if you need to keep bulk two party preferred and two candidate preferred down to polling place level and that's a matter for administratively. I'm talking about generally as an overall result but certainly I do think that the preference counts. The counts after preferences should be available.

I've been publishing those booth-by-booth results for the Parliamentary library for the last four or five elections. They're all done as an estimate of preferences. I've applied the electoral level preferences to the booths. I think it would be perfectly feasible, I think it would be better if we actually had the real counts rather than my estimates.

**CHAIR:** Is there any reason why the SEO doesn't - I mean that information as you know is given on the night of the election - I mean I've sat by the computers watching it come in so I know

that it's there, is there any reason that you're aware of why that information is not maintained?

**Mr GREEN:** It's because they've never done it and they're very resistant and it would take more resources to do. It would take more resources for their returning officers to do that and they would have to change all their forms and, as I said, they've always been very resistant to change at the Electoral Office and if they went and had a look at some other State's procedures they'd see that it's quite easy to do. It does cost more, it needs resources but it can be done.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Do you think that the rolls are reliable and or that there is significant rotting of the registration process in voting?

**Mr GREEN:** That - if you go back and the book you're talking about is by Amy McGrath and she's done numerous books, usually with the same examples. When the electoral rolls were first computerised in the 1980s and in 1987 Federal election was the first State election where it occurred. I think there were some irregularities in those first early elections just simply because they replaced all their old manual system by computer system, they lost some of their manual procedures that went along with ensuring enrolments are correct. Some of the examples in that book, a number of them refer to Labor rorts in the 1989 Queensland election. Now that completely ignores the fact there was no joint roll agreement in Queensland in 1989 and they maintained the wrong rolls, so they can't blame the AEC for that but there are facts like that they tend overlook in that book.

They have tightened up the procedures substantially over the years and there's always room to improve them. They have adopted - once upon a time the rort used to be to register lots of people at an address which didn't exist and they used to be able to go on the roll like that, you can't do that anymore, they now cross reference with the Australia Post address system, so they're tightening up on those sorts of things. There are always questions about who they should be doorknocking on to check whether there's false enrolments in an address. They used to doorknock every electorate and the AEC argued for years it was a complete waste of time, what's the point of going around and knocking on every door in Barwon because there's only a 4 per cent movement between elections and you're just knocking on the same people's doors all the time, so it started to identify sorts of houses which are worth investigating.

The classic was always caravan parks, where you'd have 150 people at the same address and they started to tighten up on that. Households with four people with different names, all at the same address, they're usually rental houses people have moved in and out so they started to concentrate on those. But if you've been at the same address for 15 years and when they cross-reference against the driver's licence and the gas bills and the postal addresses and it's the same person at that address and you're on the electoral roll at that address they're hardly likely to turn up and knock on your door.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** So they have the right to cross-reference with certain other databases, do they, within the privacy laws?

**Mr GREEN:** You'd have to check with the Electoral Office. As I said, in New South Wales you'd probably have to check with the AEC not with State Electoral Office. But it varies from State to State and some States they send all 17-year-olds an enrolment form when they get their driver's licence. They tend to send - I think in Victoria and Colin Barry would be able to confirm this with you - I think they send letters to HSC students saying, "Are you on the electoral roll?" In some States they check - I think New South Wales they do check with the driver's licence register. In some States they check with gas authorities. They have to sign agreements in this but there's a fair bit of cross-checking gone into it in recent years and it is to tighten up the rorts that did occur in the past and one of the difficulties I think with the books Amy McGrath does is they tend to keep going back to the old examples and one that was--

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** It was relaunched, wasn't it?

**Mr GREEN:** The one that keeps getting raised is the 1990 Richmond election and they said that 30 dead people had voted. Thirty dead people didn't vote, 30 dead people had been identified by the Electoral Commission and marked as dead and therefore when the rolls were scanned as a result if

those people had voted it would have jumped up and said, hey, we've got a dead person here and they've voted. What they'd done they'd marked the roll and when I think the National Party got the roll and checked it this box had been checked to indicate voting. In fact it was marked with a code indicating the person was dead, but that's got lost in the translation, it's now become this 30 dead people voted and some of these past examples tend to get recycled and recycled and recycled.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Do you think there should be procedures to stop multiple voting between persons in different booths? Is there any record of people voting in a number of different booths because each one only crosses off a paper list?

**Mr GREEN:** The AEC can tell you how many people crossed off at more than one booth and can tell you the incidence of multiple voting. Most of the instances of multiple voting tend to be because someone has crossed the wrong name when they've crossed your name off and therefore what you get is one person gets the letter saying you haven't voted, another person gets the letter saying you voted twice. Because we have compulsory voting most people turn up and vote, it's hard to personate. One of the biggest instances of multiple voting, which is verified, is people who voted in a retirement home in the week before the election with the mobile booth that comes round and then their kids take them up on the weekend and take them to vote and they pop up, you know, we've got 85-year-old grandmothers voted twice and usually that's one of the reasons they get it.

**CHAIR:** Some of them wouldn't even know they've voted twice.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** You're saying there's very little fraud then, very little deliberate fraud in this.

**Mr GREEN:** If there was a false enrolment and someone knew that false enrolment they could turn up and vote - if someone knew they weren't voting on the day in the electorate they can turn up and vote but then that person may have voted somewhere else and you would get a multiple incidence. But above all, for all the people who get very concerned about rorts of elections, if you're going to have - all you would do in tightening up the voting procedures is make it harder for people to vote, if they had to turn up with ID and what you would result in is less people voting.

**CHAIR:** It would slow down the process too.

**Mr GREEN:** Yes, and you'd slow down the process. If you went back to the process where you have to vote at a fixed booth and you turned up at the wrong booth, you had to present ID, you had to sign a declaration to vote, you would slow down the whole procedure and it would probably result in less votes, less people voting. Under our current system we've got a system, which is like the Visa card system. The Visa card system is wide open for abuse - if you can pinch someone's Visa card you can go on the Internet and buy some goods or you can walk into a shop and you sign a signature and you can buy stuff. Why is it wide open, because banks aren't interested in cutting down the amount of credit around, they're prepared to wear the loss.

With the Electoral Act, with the Electoral Commission the audit trail is post-d'Hondt, scanning the rolls afterwards and finding out if someone has voted multiply. If there is a high incidence of multiple voting in an electorate and the electorate was decided by 20 votes and you had 150 unexplained instances of multiple voting that case would fall apart in the court of disputed returns, you couldn't guarantee the election was fair because there was instances of multiple voting that couldn't be explained, so you get a by-election out of it. So the instances or the reason why you'd want to multiple vote to rort an election, you would actually make it likely that your election would be overturned even if you did win with that multiple voting.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** So you're taking the view somewhat of the banks, that you want more people voting and you'll take the risk on the openness of the process.

**Mr GREEN:** I thought you'd raise that point. It is certainly true but we are interested in having everyone vote and what you will do is if you tighten up on the procedures you would almost guarantee there would be less people vote. People would turn up, I haven't got an ID; they wouldn't

turn up and vote. The people you'd disenfranchise would be itinerants, renters, Aborigines, people who have the most difficulty explaining who they are.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Do you think that there is something wrong with the parties looking after postal votes as opposed to the SEO or AEC?

**Mr GREEN:** Yes, and you will find that every Electoral Office in the country doesn't like that either because what the parties used to do was send out an application for a postal vote and they would fill that in, send it back to the party and then the party would send it to the Electoral Commission and the Electoral Commission would send out the actual application, so there was a double-handling that way. The parties changed the Electoral Act a number of years ago and allowed them to publish the application to cut out the double step. So the parties used to solicit for postal votes by soliciting people to get an application. All they did was take out a step in between which has actually cut down the extra step.

Why the Electoral Commission doesn't like it is, there's a form which is one of theirs for an application, an application form is going with party material and they don't like that but there's nothing they can do to do that because the Act has been changed to allow that. I would prefer that those applications were sent straight to the Electoral Office as well and so would the Electoral Office but I think you'll have to argue to change that.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** There's no reason it shouldn't be, is there, I mean the same list is available to both parties.

**Mr GREEN:** No. There's no list of postal votes.

**Mr PEARCE:** No, not in New South Wales, federally there's registered postal voters.

**CHAIR:** There are registered postal voters and they should receive them directly from the--

**Mr PEARCE:** I don't think that's the case in New South Wales.

**CHAIR:** No, they just don't coincide. The problem is you could apply to be a registered postal voter in the Federal election but you won't get that in the State. You've got to be registered in both.

**Mr PEARCE:** Because there's a belief amongst people once they'd registered on the Federal register they're on the roll for the State and then next thing they go into a panic on the Friday when the papers haven't arrived.

**Mr GREEN:** There are two registers; there are the registered postal voters who are permanent and then the casual postal voters.

**CHAIR:** And they do come out directly from the Electoral Commission to the voter, they don't come through the parties.

**Mr GREEN:** There is no - to explain that - of the people who vote casually, postal voters which is the vast majority in city electorates, it's a bit different in country electorates, there is no list which the parties get. The reason it comes through the party is the party then promptly hands it on to the Electoral Commission and it's not in their interest to not hand it on and under the Federal Act it's actually an offence for them not to hand on the application, so there's nothing which causes a party to delay that hand on. So there's no register yet but the parties do love it because they can send how to vote material out to the person who's going to get the postal vote later.

In Britain if you apply for a postal vote it's registered by a certain date and the parties get a list of everyone who's applied for a postal vote and then the parties send all those people how to vote material, so therefore it's handled through the Electoral Commission first and then the list is handed to the parties afterwards but the concern the parties have with postal votes is to get the how to vote

material out.

**The Hon. AMANDA FAZIO:** Just in relation to that British system you mentioned, does that then mean that they have an earlier cut-off, the application for postal votes than we have here?

**Mr GREEN:** Yes, they have a much earlier cut-off. They have a much earlier cut-off for lots of things with rolls, so I think there's a variety of procedures you can adopt on that.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** But it's cheaper for the political parties who are sending out material anyway - it's only because the political parties are sending out material and they say you can get a postal vote through us, whereas the Electoral Office is not sending out that material is it?

**Mr GREEN:** The Electoral Office would rather encourage pre-poll voting and I always encourage pre-poll voting to people as well because simply - I tell people if you've got a postal vote there's a lot more double-handling - there's a lot more reasons why your vote can be rejected from the count on a postal vote because you haven't signed it correctly or dated it correctly or witnesses it correctly or it doesn't agree with your application in some way. So I always tell people if you want to ensure your vote I'd go for a pre-poll vote, it's much more likely.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** What is your position on whether the SEO or the political party should deal with postal votes?

**Mr GREEN:** I would rather the SEO dealt with them but the SEO is not going to send out applications to everyone.

**The Hon. DONALD HARWIN:** What's your reason for that?

**Mr GREEN:** I would prefer that SEO material not be with party material and that would be the position of the Electoral Commission.

**The Hon. DONALD HARWIN:** That's your preference.

**Mr GREEN:** That would be my preference.

**The Hon. DONALD HARWIN:** But what is your reason?

**Mr GREEN:** Because I would prefer that the State Electoral Office applications not be mixed with party material but, to be honest about that, I can't see that that provision is going to be turned around because it's much more convenient for a lot of people and it's convenient for the parties. I'm taking the position that I don't like it but it's something we'll have to live with.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Why is it convenient for the people, surely they get the letter either way?

**Mr GREEN:** People like postal votes. They like to be able to get their ballot paper, look at it and consider it and things like that. There's a lot of people - more and more people work all day Saturday or doing other things, they've got busy lives, postal votes is something that we're going to see more of.

**Mr PEARCE:** I tend to agree with you in relation to the encouragement of pre-poll voting but pre-poll voting as it currently operates at the State level is not convenient for anyone in terms of the placement of the offices, they're not well sighted, the Electoral Commission does not choose - they choose what they can get rather than identifying where the best place is for it and then when people do get in there they invariably - I'm an electorate with a very high religious community who votes pre-poll and you can have a queue stretching down the street, so as long as you've got that inefficiency in that process and the complications of the process at State level getting a pre-poll then you're going to continue to have people applying for postal votes, at which point, unless there's significant

resources going to the State Electoral Office to do what the parties currently do, you're going to get a massive log jam in the system.

**Mr GREEN:** You also find in country areas they tend to be set up in courthouses. I mean courthouses aren't places people drop by like they used to, not if they ever did but there seems to be serious sighting problem with pre-poll voting centres and the CBD is a classic example. There are hundreds of thousands of people in the CBD who would vote pre-poll but, as I remember when I went to vote there last time - it was the 11th floor and if you're familiar with Town Hall house if you enter on the wrong side of the building the lifts only go to the 10th floor, so it was a complete mystery where this thing - you had to sort of go to another floor and go up and I eventually got there and there were people all over the place trying to vote in this little tiny office which was the Port Jackson returning office. It's just not suitable for the CBD just to have one little tiny--

**The Hon. DONALD HARWIN:** On the purging of the rolls or the going through the rolls, as you identify the process, again, in eastern Sydney there's pockets of high levels of rental accommodation and apparently rapid turnover. It is not at all uncommon in polling booths in Coogee and the neighbouring seat of Vaucluse that there are masses of people who believe them to be on the roll, who have been dropped off the roll, who have never moved because for whatever reason the electoral people who have gone around - and it seems to occur every six months in some areas in the eastern suburbs of Sydney.

**Mr GREEN:** You'd be familiar - I mean in your electorate you've got a lot of apartments; postmen don't have access to the building.

**The Hon. DONALD HARWIN:** You've got a whole lot of security blocks, you've got letterboxes outside, the whole system is actually, in my view, designed to knock people off the roll rather than keep them on the roll.

**Mr GREEN:** That's something I think really has to be taken up with the Federal authorities but I think there are - particularly in your electorate--

**The Hon. DONALD HARWIN:** Yes, but that then flows onto the State because we've got the common roll between the Federal and State and there is a quite significant impact, so when you talk about people rorting it and the necessity to keep the rolls up to date, Arthur, you actually have to look at it on the other side here, that you've got people who are moving around who do live in apartment blocks then they are more likely to be knocked off the rolls.

**Mr GREEN:** I worked in Scotland for an election a number of years ago and in Britain you don't always change your enrolment, you'll find you'll move into a house and the council will put you on the roll. If you go to Saint Andrews University, which was in the middle of where I was working in Fife, the university when all the students moved into student accommodation they gave a list of all the students moving into the accommodation which was all two bedroom apartments to Fife Council who put them on the roll but Fife Council never took anyone off the roll, so come the election there were eight people registered in all these student residences. They all got sent voters cards saying, you're on the roll in Saint Andrews north ward and you can vote at such-and-such a polling place and as most of them were conservative the Liberal Democrat candidate I was working with was terrified that all these Tories were going to turn up and vote because they had a voter's card. If you've got a voters card and the students - and no-one has a faintest clue who they were - you can just vote because they treat that as a form of identity.

In fact most of them didn't vote because they didn't really care, they were students and they didn't want to be in Saint Andrews because they don't live there, they just happen to be there while they're at university. In Australia you'll find a lot of people who are registered at an address, which is technically not where they live, you'll find people coming down from the family farm and staying at Sydney University for three years and they're still registered at the family farm. You'll find kids who've just left home, they're in rental accommodation in North Sydney or Surry Hills or somewhere and they're still registered with their parents. Under the Electoral Act you'll find that's probably technically wrong, they can't do that, but they feel their meeting their obligations and they're--

**The Hon. DONALD HARWIN:** I think it's a three-month period where you've got to enrol. If you're moving your accommodation on a relatively frequent basis, like six month leases as you get in the eastern suburbs, then you can very quickly find yourself off the roll.

**Mr GREEN:** Yes, but the only people who actually bother to keep their enrolment up-to-date that quickly are people really interested in politics who are after pre-selection.

**The Hon. DONALD HARWIN:** And therefore the kids tends to stay - or the younger people tend to stay enrolled at their parents address until such times they get permanent abodes.

**Mr GREEN:** The point I make though, Arthur, is you will find that there are inconsistencies in the electoral roll where people aren't at an address where you think they live but when you check into it you'll often find this isn't some sort of rort, they're doing their best to meet their legal requirement of being on the electoral roll and they do it in the way which is most convenient to them.

**The Hon. DONALD HARWIN:** Antony, I have some questions about the whole issue of the timeline for elections which you dealt with in your submission and which you spoke about in your statement at the beginning of your evidence. You talk mainly about the change to the clause in the Constitution Act which would effectively give us an extra three days for the issue of the writ and that would obviously have benefits in terms of pre-poll, postal and mobile voting. I think though it might be helpful if you describe for the record how the entrenched provisions relating to fixed term Parliaments create problems in terms of the formal election period in terms of the overall length, just so that we know that and that we can consider that as well.

**Mr GREEN:** The New South Wales Act is basically - because of the way the fixed provisions were implemented we ended up with the shortest election period in the country, which is just over three weeks. Given that the rolls close on the day the writ is issued and the day - if you bring the writ and the dissolution on the same day the rolls would close the same day. Because you've got a fixed date the roll close becomes less of an issue and that allows you one less week than is allowed in other campaigns where you're allowed a few extra days to get on the roll. If you wanted to get extra time into the campaign period you would have to actually change the period of the fixed term Parliament. You would have to give yourself an extra week, which would acquire a change to the Constitution to fix that.

**The Hon. DONALD HARWIN:** Could you actually describe the provision because I'm not sure all members understand that and I think it is useful to have it on the record in case we want to actually address ourselves to that in term of our recommendations?

**Mr GREEN:** The election will be held on the fourth Saturday every fourth year, fourth Saturday in March. There's an exact date specified for the dissolution, off the top of my head I can't remember it, but it is effectively three weeks before the fourth Saturday, I think it's the last Friday before the first Monday in March I think is the specification and that effectively becomes a three week election campaign. Those provisions were fixed, I think they were very - I think it was a perfectly sensible set of things to do. The provision in there about the three days is a hangover from something which hasn't occurred for decades which is an expiration of a Parliament through the effluxion of time is the technical term. A Parliament has a fixed date of four years from it's first sitting and the Federal Constitution has one which is a ten day period for the writ, if the Parliament reaches the end of it's termination period it then expires and the provision in there forcing a writ to be issued, within a certain period, is to deal with a Parliament which expires.

**The Hon. DONALD HARWIN:** So it's essentially a redundant position as a result of the changes to the Constitution Act, which brought in fixed term Parliaments.

**Mr GREEN:** It's very much a redundant provision. In every other State and federally the writ and the dissolution are on the same day and it's automatically done that way.

**The Hon. DONALD HARWIN:** But in terms of actually increasing the length of election

periods, and still even with that three days, all we're doing is making it three weeks as opposed to the nearly five weeks that the Federal election campaign runs and that the AEC has to organise an efficient and effective electoral operation.

**Mr GREEN:** Yes.

**The Hon. DONALD HARWIN:** The only way that an elongation can occur is if that actual provision relating to the Monday before the first Friday, or whatever you described and I can't remember the form of words myself, is changed by referendum.

**Mr GREEN:** If you want to do it other than the three days, yes, it has to be done with a referendum. Just on that, the thing is in New South Wales you have to have a fixed date. Electoral Offices should be able to arrange their polling places with relative ease compared to a Federal Electoral Office who doesn't know the date. If you bring the date forward three days and you issued a writ the same day you could ensure that your pre-polling and everything is ready to start the Monday two weeks out, you've got a good solid two weeks. If you know the date of the election, you know the date the writ is issued, if the Electoral Commissioner employs returning officers for slighter longer they can start dealing with the postal vote applications which are coming in.

**The Hon. DONALD HARWIN:** Sure, I accept that, I just wanted it all on the record. However, with the issue of the writs under the change you're suggesting, being three days earlier and the length of all of the relevant periods, they would still be shorter than what is provided for in the Electoral Act at a Federal level, is that correct?

**Mr GREEN:** Yes. The Electoral Act currently federally is minimum of 33 days, just under five weeks. That will probably be shorted to four weeks soon.

**The Hon. DONALD HARWIN:** Can you remind us when the close of nominations is at a Federal level?

**Mr GREEN:** In a five week campaign the rolls close at the end of the first week and nominations occur at the end of the second week, which is three weeks ahead of polling, so you have a three week period for pre-poll, postal, absent.

**The Hon. DONALD HARWIN:** Whereas under what you're suggesting we'd still effectively be a week shorter.

**Mr GREEN:** Yes.

**The Hon. AMANDA FAZIO:** How often do they have a five week Federal campaign though?

**Mr GREEN:** Thirty-three days is the norm, it's the minimum, absolute minimum. Because the Government is about to change the close of enrolment, so it's the day the writ is issued, you will find I suspect they'll probably also shorten the campaign by a week.

**CHAIR:** Any other questions about this?

**The Hon. DONALD HARWIN:** We've got a few others.

**CHAIR:** Not about the upper House we're going to deal with shortly, we're going to deal with that separately.

**The Hon. DONALD HARWIN:** That was the main one I wanted to take Antony through, I think we're right on the others.

**Mr GREEN:** Just on that, if they do bring that forward they can just re-specify the date of the close of nominations. If you know the date the writ is issued it's dead easy to set the day the

nominations close and everyone knows the election is coming.

**The Hon. DONALD HARWIN:** The only other general question I'd ask you is, if there are any specific electoral administrative procedures adopted by other State Electoral administrations which you think are particularly worthy of our attention.

**Mr GREEN:** I'll tell you one, in Western Australia. There's much more cooperation between the State and the Federal Electoral Office. In Western Australia I think it's fifteen divisional return officers for the AEC act as returning officers in some of their State electorates and I think that's useful. I think you'll find that - I don't think the AEC divisional returning officers can take pre-poll votes at State elections, they're not deigned; they're not given that power.

You'll always find some conflict between the State and Federal but there are actually some trained people there sitting in divisional returning officers and when Federal election is on they're not always that busy. I'm sure if you had a State election coming around that some of them would be able to offer some assistance and I think some more use should be made of them and you can talk to Colin Barry because in Victoria he changed his whole Act and got rid of divisional returning officers and they're called election managers and some of the election managers manage more than one division at a time. He radically redrew the way their Electoral Office works so there's various things you can do but you do need a few more skills amongst the staff and you do need to be able to appoint them slightly earlier and I think Colin will probably have a lot to say on the problems of returning officers.

**Mr CORRIGAN:** That pretty much was the question that I was going to ask. In a briefing to us the Electoral Commissioner described changes that they made in Victoria, do you see there are any changes that Victoria has made that could benefit New South Wales?

**Mr GREEN:** They have a very sensible way of registering how to vote material. I'll say that. I certainly know there was an Independent, Susan Davies, at the last State election who had a how to vote card rejected initially by the returning officer who considered it was misleading. I think he took a rather bureaucratic view of misleading but I mean technically it was correct and she had to change in a way she didn't really want to but it does strike me that many of these are much more proactive in thinking in their planning, they're much more media friendly, I certainly know that but you've got to get the right person at the SEO all the time to find out a certain bit of information.

I always remember doing a book on redistributions in the early nineties and there was someone who worked in the Electoral Office who'd taken the 1984 election results and indicated what electorate in 1988 all those booths were in. It was an absolute godsend for me to be able to work that out but this person had kept their copy of the 1984 results with all their pencilled marking and you find that some of those sorts of things have occurred, there's no institutional record of stuff, it just happens to be someone has kept something.

**CHAIR:** Some of the information that's been presented to us or one of the criticisms was that when candidates or parties contact the SEO, speaking to different people they got different information, conflicting information, would you say that's a fairly common problem?

**Mr GREEN:** I of course don't work on campaigns so some of these problems that occur, I mean they tend not to come near me when there's problems but during the Local Government elections last year I was working at the State Electoral Office for about two days getting some past Local Government results, so I could do some analysis on the night, the sort of tedious hard yards you have to do in my profession sometimes, and on that day the Government had put in some rather strange provisions with how to vote cards, that people had to register two preferences above the line, and candidates were really upset about why that had to do this, when they had to basically give preferences to as many candidates on the ballot paper where a formal vote was only for half the number of candidates. It was complete confusion and there were clerks there had been constantly rung up all day and one of the problems there was simply that the provisions were complex and you didn't understand why there were there and it just caused people to ring up and complain.

You'll find that how to vote cards are a classic for that, people ring up because of the how to

vote card, the SEO says you've got to do this or you've got to do that. As far as provisions for campaign leaflets, one of the submissions was about mobile polling at retirement homes up in Ballina and the provisions were different from the Federal Act and therefore they wouldn't do one particular nursing home and I think some of the problems that occur are simply because their provisions are different from the Federal Act. They just need to train their returning officers more, they need to appoint them earlier and they need to give them a better guidebook of things to go by. I think too often that everything gets referred straight back to head office and I think there's an extent where better trained people on the ground would deal with the first thing, if you've got a complaint about it, then you go to head office where nowadays the things go straight to head office and there's usually one or two people trying to do everything in the entire State and they get confused.

**CHAIR:** Any further questions?

**The Hon. DONALD HARWIN:** On the upper House.

**CHAIR:** Antony, is going to now tackle the upper House or try to tackle the upper House, should I say.

**The Hon. DONALD HARWIN:** Give an opening statement. Unfortunately we've got an hour and five minutes to hear it.

**Mr GREEN:** Okay, I'll try not to.

**CHAIR:** A brief.

**Mr GREEN:** The background on the problems of New South Wales upper House is basically that when the electoral system was introduced to have popular election in 1978 the Labor party I think to an extent were obsessed to ensure that this system wasn't rorted and so they invented everything they could about the Electoral Act about the counting method into the Constitution to prevent it being changed afterwards and that resulted in all these procedures about random sampling being stuck into the Constitution and they are the gospel that have to be followed and there's no way to change it without a referendum because it's been entrenched.

The procedures that were adopted in 1978 were the same ones that were used by the Senate and had been used since 1949. The one diversion from the Senate system was the use of optional preferential voting, the number of preferences was limited and if you go back to the debates on the bills in 1978 and 1980 the Labor party did that because in their view in 1974 when there was 73 candidates in the Senate in New South Wales they viewed that as a deliberate attempt to increase the informal vote to prevent Labor getting control of the double dissolution at that election and Labour remembered that in 1974, so in 1978 they insisted on optional preferential voting and that was included in the Act.

The rest of the provisions - I've got a copy of schedule 6 here - Part 1 of the schedule sets the basic information that it's going to be elected as a single chamber and entrenches optional preferential voting but Part 2 then has all the procedures to count the votes. The key problem with this schedule 6 is that Part 2 should be better off in the Electoral Act. If you want to protect the proportional representation in a single statewide chamber you can put that in the Constitution without embedding all the procedures about how to do the distribution of preferences, how to do the surpluses, how to do the random sampling, that just shouldn't be in the Constitution, it should be in the Electoral Act where it can be amended.

You can put basic provisions in the schedule which determine the general shape of the Electoral Act that's used to elect the Legislative Council but the detail of actual counting just shouldn't be embedded in the - entrenched in the Constitution, it should be available to be amended. It's interesting, as I always say, that the most radical change, which has been made to the Legislative Council's electoral system, which is the introduction of ticket voting in 1988, didn't have to do anything to the Electoral Act, it was entirely changing the shape of the ballot paper. With just a simple change to the Act, it radically changed the whole way the electoral system worked but it wasn't

impinged on by schedule 6. Yet, we do random sampling which there is no reason to continue to do it seeing we type all those votes into a computer system but we can't change that.

I should explain that's something I said in my submission. The reason the Electoral Office computerised count was concerned that the random sampling provisions would be challenged in the court. If you've got 4 million ballot papers floating around and if you go back to 20-25 years in the Senate and the returning officer would say, we've moved them round so much that they're random, so we'll just take the ones off the top of the pile, no, it doesn't work and so what the Electoral Commission did was put them into the computer system and then the random sampling was done by the computer. The problem is, you can't do the count again because you might get a different result. Now this hasn't happened with a Legislative Council but if you go and look at the results in Tweed or Wagga or Orange at the last Local Government elections where the last seat--

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** It was damn close in a few of them.

**Mr GREEN:** --was decided by less than five votes. If you did the count again under random sampling there's no guarantee you would get the same result because you would get a different sample. That's where it got really bad and the other problem with the Local Government Act was because they then copied over the Legislative Council provisions with the new group ticket voting they then decided that to get the count right they had to bring all the ballot papers in and put them in the computer system because they couldn't de-centralise that process. If you got rid of random sampling and used a different method of calculating the surplus when a candidate is elected you could do the count manually, there would be no reason to bring all the three persons wards from Coogee or from Newcastle into a central counting centre, they could be done locally because you could do the count but if you're doing random sampling and you've got this complex above the line ticket voting system you can't guarantee you get the random sample right. You've got to start by getting rid of random sampling.

I talk to my submission because it's got a bit of a slightly more logical order. That's the problem with schedule 6, is that it's too much detail there. If you wanted to you could do broader proposals to change the Legislative Council system. Basically proportional representation systems fall into three types; one is the Hare-Clarke, or the Senate, New South Wales Legislative Council system, which is used in Australia. Overseas there's two other forms used, one is - if you start off with a quota it's easy to fill all the first seats - you might fill, I think in the last New South Wales election I think we filled 18 of the 21 seats on full quotas at the start, very easy - the problem is how you fill in the partial quotas that remain.

On the European where you only get to start with, proportional representation, where you only get one vote, what they used to do is allocate the final seat to whoever had the highest votes after all the full quotas are dealt with. In some ways that's unfair, it can be unfair, so the Europeans have all abandoned that systems and gone to the d'Hondt systems which uses a system to try and ensure that all parties elect members, have roughly the same number of voters for each candidate elected, so they go to a different system entirely.

In Australia we solve this partial quota problem with preferential voting, that's the basis of our system that once you've filled the full quotas the remaining quotas are filled by the distribution of preferences. Then ticket voting was introduced and ticket voting has allowed parties to control their preferences and direct them in particular ways. At this point, I've handed some extra information to you, on the first table there, first page, is a table of the number of preferences on ballot papers at the 1999 election. The first column is of below the line votes and as you can see there the average number of preferences on a below the line vote was 23, people filled in the minimum number of 15 and a few other, so the average was 23, the median was 15, most people filled in only 15 so you've got over half the voters filled in just 15 preferences below the line.

On the right there is the ticket votes, effectively everyone who voted for a single vote above the line, that was the preferences they ended up with, so you ended up with 43 per cent of votes had between 50 and 100 preferences and 28 per cent had 264 preferences. Below the line there was only 649 people managed to successfully fill in 1 to 264 on a ballot paper. Just as an aside I'd point out that

one of those was actually a donkey vote and if you can find out who they were I would like to take them of the Electoral Roll. So in other words, the system resulted in vast number of preferences floating around and if you go back to the 1999 election that's how Outdoor Recreation Party with a vast array of 23 different parties managed to get elected before the Greens, before the Democrats, before the Christian Democrats because of all those preferences floating around.

If you go to the next page this is some preliminary data I've got on the 2003 election. You can see here that the average number of preferences overall was 29. The second column is the group votes and this time the group votes had no preferences between groups, so they were all either between 15 and 21 which is the number of candidates each party stood, and 78.56 per cent of votes had a single "1" above the line and you can see there, the number of preferences there vastly diminished from last time simply because parties couldn't direct long trains of preferences.

The third column is above the line votes with preferences. These are people who filled in "1" for a party and then filled "2" or "3" above the line under the new provisions and, as you can see there, the average number of preferences of those people was 72 when you translate them into candidates below the line. Most people filled in two groups, between 22 and 24, and on the next page I'll explain why there was so many people who just filled in two numbers. Then below the line votes there was an average number of 30 preferences; 19.6 per cent of people voted above the line and indicated preferences and 1.8 per cent below. So basically one in five people used the new method above the line. What I don't know, what I can't indicate to you was how many people tried to give further preferences. Basically, one in five people used the new method.

On the next page you'll be very interested to see this, this is new data. This is - I've actually been and examined all the how to vote cards which are issued by parties and on that table there, that indicates how many people who voted above - the first column indicates the number of people who voted above the line and had their vote exactly the same as the how to vote card, the second column indicates as a proportion of all votes for the party. As you can see the Labor part had a how to vote card which was "1" Labor and either "2" Green or "2" Unity, they split them across 46 electorates each. They got 77, 77 per cent of all the above the line votes are exactly the same as Labor how to vote card, it was the highest proportion. The Christian Democrats had a much higher rate of above the line votes. I'm sorry to say this, Arthur, but you had the least number of people following your how to vote card.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Only 3.9 per cent of Democrat voters followed the Democrat how to vote, is that what you're saying?

**Mr GREEN:** That's right, yes.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** What a wonderful lot of independent thinkers we have.

**The Hon. DONALD HARWIN:** No, it's because we had no booth workers that's why. We couldn't hand them out.

**Mr GREEN:** About 40 per cent of people who voted Democrat actually gave their second preference to the Greens and some of them then went on and gave someone else - and I'll be publishing this in the Parliamentary library in the near future. I've done some looks at what were the sequences above the line votes people gave and there are relatively obvious ones, the Democrats tended to give preferences to the Greens, the Liberal voters tended to give preferences to the Christian Democrats, the Christian Democrats tended to give preferences to the Liberal National Party ticket. What was clear is that not many people knew how the new system worked. Even when people handed a how to vote card people tended not to follow it, so while Labor may have got 77 per cent of above the line votes, to indicate, it was only a quarter of their overall vote gave any preferences above the line - gave any preferences - because people just didn't know how the new system worked.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Because people just wrote "1" and had a large amount of money doing that.

**Mr PEARCE:** It may well have been because the voter intended to vote "1" and wasn't interested in casting preferences.

**Mr GREEN:** That is true but they also got used to that and if you're talking about education it's certainly true that probably most people did not know how that new voting system worked and there should be more publicity of that and I'm sure - what this does indicate that if parties hand out how to vote cards they're much more likely to be able to control their preferences above the line and so it's a very important thing for them to do. Anyway, that's dealing with that information on the new ticket voting system. I think the new system worked very well.

If you go back to 1999 preferences resulted in the proportionality of the system being substantially undermined. Candidates with a very low vote were elected because of the preference deals. That did not occur at the last election, the parties got elected in the order that they got a vote. Sure, I think the Shooters got quite a low vote - off the top of my head I can't remember what it is - but they were the highest of the parties remaining in the count, so the proportionality, the system was maintained, that system, if more people filled in preferences the system would change. I think if anyone was disadvantaged I think that if more people from One Nation and Pauline Hanson's groups and the Four Wheel Drive Fishing and Horse Riding Party, if they'd swapped preferences more clearly then one of them would have got up but clearly they all issued just one how to vote cards and cruelled their own chances by against each other.

But, as I say, if parties can't agree on one candidate and one set of policies and run against each other why should the electoral system act to sort of deal with a problem that they can't actually coalesce and run as one party. Further on to - I recommend that schedule 6 be amended to just have the basic details and the rest of the details be put in the Electoral Act. I would maintain group ticket voting. I know you had speakers at the last hearing talking about breaking the State up into regions. The regions would be so big that I can't see how you can do anything other than get party votes. I mean all you're doing is creating smaller electorates to make Hare-Clarke work nicer. Hare-Clarke I don't think is a good electoral system for electing 21 members but it's the system we're used to so I think we'll stay with it but if you're only solution is to cut the State into smaller divisions then I don't think you're really dealing with the problem. You would also end up with electorates of about 650,000, which is twice the size of Tasmania.

People my like Hare-Clarke but in the ACT and Tasmania the quota is 10,000 votes, they are electing the House of Government and they know who the candidates are, generally, especially in Tasmania and they're always much more locally based and they've had the same five electorates for a hundred years. In New South Wales people are focused on the lower House, they're not going to know who is running in the upper House, they're going to vote party, so I don't see why you should be restructuring the electoral system to ensure you candidate votes when people don't know who the candidates are. It's a party vote, it's a proportional system, so I'd stick with the group ticket voting to force people to indicate more preferences but also increase the informal vote and I don't agree with that. I'd maintain optional preferential voting; I think that works well.

Got to get rid of random sampling. There are plenty of ways to do it. You get rid of random sampling, as I said, in the Local Government Act you could do the count locally and in terms of the Legislative Council you could guarantee you could do the count again if there was a problem. Certainly in terms of testing, I know John Wasson the late Commissioner was very concerned that he only had one chance to run this software on the votes and they were very cautious about running it properly and then something went wrong. I do think - and there was a gentleman last time talking about the procedures used for the data entry - I do think they do need to tighten up the way they do the data entry and rethink things. I think they were trying to data entry votes which were nothing but ticks and crosses and it was just--

**The Hon. AMANDA FAZIO:** In relation to that, I mean I've been the scrutiny of the Senate count where they do the data entry there. Can you just outline what the significant differences are between the way they do it for the Senate and they way we did it for the upper House and what the pros and cons are?

**Mr GREEN:** One of the issues that's been raised with me is data entry. One of the key things in data entry is you should ensure that the person who types the first document in is not the person who types it in the second time. I think there was some doubling up done in New South Wales, which means if someone tends to make the same keystroke error they can make it twice, and so you shouldn't as a principle double enter twice on the same person. I haven't got an answer whether that did occur in New South Wales but it has been indicated it may have. You must be able to identify back to the ballot paper. Someone was pointing out a problem where someone was changing it because the ballot papers had got out of order.

You just need to have a lot more caution on the batching and I think that needs to be - they need to check those sorts of procedures but it's a relatively straightforward task. I'd be less concerned about it, I think most people who do it tend to be backpackers, they haven't got the faintest idea what they're doing, and that it's people who have come from England and they've got little papers and they're trying to deal with ballot papers like that, you know, they think it's very funny coming across something like that. I think again, if you go back to 1999, I mean everything went wrong with that ballot paper, it was too big; they had to hire bigger planes to fly them around the State. They had to get forklifts to move them around and then they were doing the count I think at Ultimo and that giant hailstorm hit and smashed the roof over all the just vote 1's and it was an asbestos roof and they had to cordon it off.

**CHAIR:** That's anything that could go wrong did go wrong.

**Mr GREEN:** Yes. You can get things like that but those votes had already been counted, they didn't have to actually go back to them, so they were fortunate in that sense. But you can get your procedures right and I think there's a sense you have to review them, they're very difficult ballot papers to deal with, especially the 1999 ones. It's very hard to do data entry with a ballot paper you have to keep moving around, so the smaller ballot paper that came in 2003 is certainly an advance.

**The Hon. AMANDA FAZIO:** But the complaints about the procedures at the last Legislative Council count, had you heard those same sort of complaints in relation to Senate counts?

**Mr GREEN:** No, the main complaints I've heard have been in relation to the Local Government. There was a deep distrust of the procedures adopted because they couldn't scrutineer. All the ballot papers were brought in centrally and there was a deep distrust of what went on there and that's one reason why, once this is done, the same provisions should be looked at in the Local Government Act because people don't trust a procedure where you can't look at the votes.

In the Senate and the Legislative Council there are so many ballot papers that I find it hard to believe that in data entry some sort of institutional law would occur. In Senate ballot papers the formality procedures are so complex that the computer does all the checking the formality and that's why there's very little scrutiny. In New South Wales because you only have to have 15 preferences there's a lot less scrutineering but certainly some people want to come and scrutineer and I think the story is about who was data entering where and the gentleman that appeared last time was talking about the Local Government, he was talking about Randwick. I think they just needed to be more aware that they are there to do a service. Electoral Office people do get very annoyed at party people and scrutineers and you know--

**The Hon. AMANDA FAZIO:** What we're doing is helping them establish the integrity of the count.

**Mr GREEN:** If you go to the ACT the electoral commissioner there has the attitude that the scrutineers are there to ensure the count is done correctly and they have a much more positive attitude about scrutineers. I think again as things tended to occur is in the really close seats there was a vast pressure and they were unsure about the procedures and there's a whole bunch of very senior party people barking at them about things. The whole thing seems to breakdown, so again that comes back to training time and with the upper House count, just ensuring that if people do come along and want to scrutineer they don't get met by somebody who says, "God, what do you want to do that for?" which

they don't quite get but if someone does turn up to scrutineer at an upper House count there's a look a astonishment on most people from the Electoral Office and I think they should get slightly better treatment.

**Mr PEARCE:** I think, Antony, the local government count is probably more the issue there where you have people queued up outside, have not idea when the scrutineering was going to take place and when they actually got inside there was no way they could scrutineer because there was ballot papers all over the place. Then in one instance in the south ward of Randwick Council where there was a recount took place, the result was the same in terms of who was elected, but the result in terms of numbers of votes varied by about 60 or 70 votes.

**Mr GREEN:** Yes.

**Mr PEARCE:** There was a general view that was there going to be another recount, and were we going to get a different result again. It could have just carried on.

**Mr GREEN:** The New South Wales State Electoral Office has a longstanding policy in being very nervous about informal voting. This goes back to 1991 when they didn't release informal vote figures on the night when there was a record informal vote and in 1995 they still wouldn't release informal votes. We had to pull teeth to get it off them in 1999. In the local government count last year - I know because I was getting figures from returning officers from the councils - they had some very confusing rules to use about how to count votes; about how to count a below the line vote and how to count above the line votes, and they were basically told just bundle them all together because you can't determine the formality of the vote.

You should never be in a situation where people feel that don't have to count a vote because they can't. Every vote must be counted in some way and you must be able to, when the batch comes in to the Legislative Council count, you must be able to verify what this batch is. I think the Senates got very good procedures. There was some confusion last year because what the Senate do, all they do is come up with a total for each column on the ballot paper, of above or below the line votes, and they don't ask the staff in the polling places to distinguish whether a vote is formal or not. Where is the number 1, is it not obviously informal, all right, that's your total, that's what you record. They go back to the returning officer, the returning officer then separates out the above the lines and the below the lines, again pulls out some of the more obvious informals, and then all the below the line votes get sent into data entry and the above the lines stay with the returning officer until he finishes everything else, so there's a separation of them at that point.

I don't think there was enough separation at the last New South Wales Legislative Council count. The suspicion I've got, the concern about whether things were ticks and crosses and 1s and whether there was multiple 1s and whether is was formal or not, resulted in them sending everything in and then trying to data entry everything and let the computer determine the formality and I think that caused all sorts of data entry problems. I think there are procedures they can adopt which make it clearer, so that there is much more confidence about the votes coming in from the returning office into the data entry, and everyone can check back where those votes have come from.

There was some confusion at the Federal election because they put all the initial counts in and then as the data entry occurred the figures were corrected and you got above the line votes and below the line votes started to separate out and that caused some confusion at this election. Those sorts of confusions occur and it just comes back to having the right procedures and then asking returning officers to be a bit more sensible about things and picking returning officers who've got a bit more skill and then giving them the ability to make decisions and follow procedures.

This is where it gets complex.

**The Hon. AMANDA FAZIO:** This is where I leave you. I've got to go up to my other inquiry.

**Mr GREEN:** You don't want to hear about Gregory quotients.

**The Hon. AMANDA FAZIO:** I'll read it in the transcript thanks.

**Mr GREEN:** The key thing when a candidate is elected under our electoral systems is determining which votes to examine as surplus votes and distribute as preferences. The problem in New South Wales is, we calculate this transfer value, like if a candidate has got 100,000 votes and the quota is 80,000, we say they've got a surplus of 20,000; we therefore sample 20,000 of those 100,000 votes and transfer the ballot paper. That's the random sampling method. The system used, which is what I call fractional value transfers, is you take all 100,000 votes and you basically discount them; you transfer all the votes at a discounted rate. It's effectively the same thing but every vote is counted and you can do the count again, basically, so if you wanted to continue with the current counting system in New South Wales all you need to do is remove that random sampling provision and you could continue on allowing every vote to continue.

We've got a variant of the Hare-Clarke system used in Tasmania, which is called the Gregory quota - the Gregory method - and all the Gregory method does look at the last votes you had to determine which votes to transfer. There's a sheet of paper here, which I'll refer you to, this is from a paper by David Farrell and Ian McAlister published in the Journal of Politics - it is referenced in my submission. What this does is look at an example of an election where there is a quota of 70,000. I think it's got a quota of 50,000 or something and this Candidate Shirley has 35,000 votes at the start, they've received some preferences from a candidate called Tom and then the third count they received some more ballot papers from a candidate called Dick who gets that Candidate Shirley over the quota.

The first line there under the Gregory method is the incoming value, so all of Shirley's votes, there's 35,000 votes, they're a value 1 because they're her votes. The votes that came from Tom, there's actually 100,000 coming but their transfer value is .1, there's only 10,000 votes. In New South Wales what we would have done, we would have gone to those 100,000 votes and we would have sampled 10,000 at that transfer value of .1. Under the Federal system and in Tasmania, what they do is they take all 100,000 votes and distribute them but at a value of .1, so the votes continue on.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Does that mean only a tenth of Tom's people vote for Shirley Nix, or she was the tenth preference?

**Mr GREEN:** No, there's 100,000 voters who went 1 for Tom, 2 for Shirley, and they've all gone to Shirley because all 100,000 votes have gone to Shirley because they had second preference for Shirley.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Why does she only get a count of .1?

**Mr GREEN:** Because the other votes that Tom has have been set aside as his quota.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** So 90,000 was the quota. You said 70,000 was the quota, didn't you?

**The Hon. DONALD HARWIN:** It must be 90,000.

**Mr GREEN:** Let me verify what the quota value is. This is a constructed example. I'll tell you what the quota is. The quota here is 50,000, so what's happened is that, say, Tom has had enough votes for two entire quotas - it's elected two people.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** He can't.

**CHAIR:** It's a surplus of 100,000.

**Mr GREEN:** No, he has a surplus of 10,000, so as I say, he's had 110,000 or something or other or other. Actually, no, he could have had 300,000 votes and of those 300,000, 100,000 had second preference for Shirley.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Yes, right.

**Mr GREEN:** Whatever his initial quota was, he has a 10,000 surplus.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Right, he's got a 10,000 surplus, yes. That's okay. That's why it's point 1.

**Mr GREEN:** That's right but he's got a 100,000 of his votes have second preference for Shirley. I don't know how many votes Tom has initially but of his votes 100,000 are for Shirley as her second preference.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** But he's only got 10,000 to transfer, so he's got a value of point 1.

**Mr GREEN:** But he's only got a 10,000 surplus. Under our system there are 100,000 which are 1 Tom, 2 Shirley, and you would sample 10,000 of them and transfer them. Under the fractional system you would transfer all 100,000 but at a devalued rate.

**Mr PEARCE:** Each one would be worth point 1.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Which would relate to the amount of quota he had left over.

**Mr GREEN:** That's right. Yes, so that's what you do there and in the case of Dick, the third candidate, he was an excluded candidate, he wasn't a surplus, so when he's excluded all his votes come at full value.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** I see. Fair enough.

**Mr GREEN:** That first line there is their incoming value to Shirley under this fractional value system. Her votes and Dick's votes are at 1 value and Tom's are at point 1. The second line is what's called their outgoing value. Shirley has now got above 50,000 votes with 10,000 from Tom and 20,000 from Dick she's got up to 70,000, so she's got a surplus of 20,000 votes. Under the Gregory method, which we use in New South Wales, the votes that got her over the line were Dick's, so that when she was elected under our system in New South Wales her primary votes would not be looked at for preferences, Tom's primary votes would not be looked at for preferences, the only votes looked at would be Dick's because he was the one that put her over the quota. That's how the New South Wales system works and that's called the Gregory method and that's the method used in Tasmania and it's sort of used in the ACT. It's not the Senate system.

The Senate system is this next line here called the inclusive Gregory method. This is the same on the first line, the votes that came to Shirley are the same value, her votes are at 1, Dick's are at 1 and Tom's are at point 1 but what happened under the system used in the Senate is, all the votes that come in are treated at full value to determine the surplus quota, so she's got 35,000, there's 100,000 come from Tom and 25,000 from Dick. Under the Gregory method used in the Senate is that, technically, Tom's votes end up carrying a lot more weight because they're all treated at full value to determine the surplus, so they go - she's got 20,000 above her 50,000 quota but what they've gone and done is they've said you've actually got 160,000 votes at the moment and they calculate an entirely different surplus value of point 125. The problem there is that, as the votes go out as next preferences they're actually increased in value compared to what they arrived at and that's one problem with Gregory method that's used in the Senate, is you can get these special cases where that occurs.

**Mr PEARCE:** But only the ballot papers for Tom.

**Mr GREEN:** Only for Tom, yes. That did occur recently and I've again referred - there's a paper done by the Western Australian Electoral Commission, which I refer the Committee to - which deals with a case where that did occur at the 2001 Western Australian election with a small number of votes. It's a very small problem. I think the Federal Electoral Commission will move towards moving away from that because now we use the computer system it's very easy to overcome this but under the old manual system it was complex.

The third set of lines on this is what's called the weighted inclusive Gregory method and what this does is that it weights the votes by the value they arrived at, so instead of dealing with all the ballot papers to determine the surplus, it weights them by the value they arrived at which is the fairest

way to do it. The key thing I'll point out, the difference between the Gregory method and both the inclusive and the weighted Gregory methods, is if you look under both of those methods, like the Senate, all votes are looked at. Under the New South Wales method only Dick's votes were looked at as the candidate electing them. Under the Senate system you would look at the preferences of all the votes you had at that stage, whether it be Shirley's first preferences or Tom's. Where that becomes relevant is that - I'm not sure where Jenny was on the coalition ticket in the last election, were you number 2?

**The Hon. JENNIFER GARDINER:** In the last one?

**Mr GREEN:** Yes.

**The Hon. JENNIFER GARDINER:** No, the one before it was.

**Mr GREEN:** If Jenny or Don is sitting down the ticket, on the Liberal or National Party ticket, if they've got--

**The Hon. DONALD HARWIN:** I was at 6. I was the last one in.

**Mr GREEN:** Yes. If he's got 2000 primary votes, is when he's elected his preferences are not looked at to determine the surplus. The only votes that are looked at are the ones that come down the ticket or in the case of the example I've got here, Dick's preferences. The Senate system means that all the votes of a candidate at the stage when they're elected get looked at, which means - and this came up many years ago and why the Senate changed the system, I think it was an election in 1980, it's dealt with in the Farrell and McAlister paper - there was a lot of Labor people who gave their first preference to Neville Bonner, who was I think number 3 on the Liberal ticket at that stage, and then went across to Labor. The problem was that Bonner was elected on the surplus from the Liberal party which meant that all those people who were second, third, fourth preferences for Labor had their votes locked in with Neville Bonner and the preferences that counted instead were from the number 1 on the Liberal ticket. That's why the system was changed.

If we change our system I would recommend that we also switch to the Senate counting system. It's the one that everyone is most familiar with. It's the one that works best with group ticket voting.

**The Hon. DONALD HARWIN:** Not the weighted inclusive.

**Mr GREEN:** I'll come to that. I would recommend we at least adopt the Senate system. I would also recommend the weighted Gregory. Why I pause on the weighted Gregory is simply because no-one has written a program that works yet for it and if you went and stuck that in the Constitution for the next state election and didn't have the program written in time you've got a problem. Along with my proposals about ensuring that the detail is taken out of the Constitution, I would recommend the weighted inclusive Gregory method but I really would recommend that there be consultation to ensure that we actually have the computer program that does it. It should be possible to do. You could adopt the inclusive Gregory method and by the time of the next Federal election they could use the Commonwealth's counting system if they wanted. They could actually not have to rewrite their software, they could actually adopt the Commonwealth's, but I would recommend the weighted Gregory but I think the difficulty is just simply that at the moment there isn't one floating around that's been written and it would have to be tested and written.

**The Hon. DONALD HARWIN:** Just outline why weighted as opposed to inclusive. Is it only to overcome the problem of votes increasing in value?

**Mr GREEN:** It's to overcome - it's a pathological case but it could exist and in this case, as an example here, there were 100,000 of those ballot papers from Tom and that's severely weighted the distribution of preferences when Shirley was elected under this example; 62.5 per cent of the preferences are actually Tom's when his value was only 10,000 that came to him at transfer value but when they went out from Shirley's preferences they were the dominant part of the preferences. That shouldn't be the case. It should be weighted by how much the vote was when it came into the count, so I would recommend the weighted inclusive Gregory but I would just put the caveat on that that

no-one has written a weighted inclusive Gregory method.

I think there should be some consultation. It may well be that the AEC moves towards that but as the counts are all computerised the difficulties that come from having the weighted inclusive Gregory method are complex in terms of manual count but no impossible to overcome though.

One final thing, I would continue with the system that's used in New South Wales where exhausted preferences are excluded when you go to calculate the transfer of the surplus vote from a candidate. If someone has gone 1, 2, 3, 4, 5 and 1 to 15 and stopped, I don't see why a sample of exhausted preferences should be transferred to the exhausted box and a sample of or a part of a vote with preferences should remain with the candidate. I think all votes with preferences should remain in the count and exhausted preferences should just be excluded and left with the candidate where they finished. That's in the New South Wales Electoral Act. It's in the ACT Electoral Act. It's not in the Commonwealth Senate Act or the Victorian or the Western Australian or South Australian Acts but I do think that's worth keeping because it does actually make more sense to allow the votes with preferences to continue.

**The Hon. DONALD HARWIN:** In an optional preferential voting system.

**Mr GREEN:** Especially when you look at the last election and see how few votes had preferences. If there's so few preferences floating around you want as many of them in the count as you can.

Just in summary, I would recommend you take out those bits from the Electoral Act which are stuck in the Constitution and the basic section of the electoral system be embedded in the Constitution rather than the detail, that we abandon random sampling and move to fractional transfer values. I would recommend that we move towards the Senate style system of the inclusive Gregory, preferably the weighted Gregory, that will depend on software development and I would recommend that we maintain the way exhausted preferences are dealt with. Certainly, I think the main thing is to fix up schedule 6 of the Constitution. I hope that's understandable.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Yes. I understand you presumably are not looking at the possibility of combining the two houses into one in New South Wales, if you're going to change the Constitution.

**Mr GREEN:** Where that has occurred is in countries - I think Sweden did it, Germany hasn't done it - but you go for a system like MMP where you go for single member electorates and you go for top-up seats. Scotland - it's certainly true - I always say Legislative Councils are something you inherit rather than invent - is that the Legislative Councils we have in Australia were all inherited, that none of the new Parliaments - the Northern Territory, the ACT or Papua New Guinea or anything - have ever had upper Houses. Upper Houses are something you inherit. We adopted a bicameral model from Britain and in Australia we've never been able to get rid of Legislative Councils, in fact, they've come to serve a useful purpose as a house of review. The house of review they were designed for 150 years ago was quite different from the house of review today.

If you're going to get rid of the Legislative Council and have a single chamber you'd want to put other checks and balances in the Constitution. I don't think you're going to get agreement on the checks and balances to put in the Constitution to ensure you don't want to end up with a one chamber Parliament that just rides rough shod, so if you're not going to get agreement for that then why not just stay with the arrangement you've got at the moment which does provide that check and balance although it wasn't actually designed for that.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** So you're saying it's too hard to change to a single house. Is that the bottom line of what you're actually saying?

**Mr GREEN:** You've got to get it through a referendum and you've got to come up with a design, which everyone agrees on. We do have a better record of passing referendums in New South Wales but I would find it very hard to believe that you can get the Labor Party and the Coalition to agree on one model for a single chamber Parliament. You might. If push comes to shove they might all one day agree to abolish the upper House.

**The Hon. JENNIFER GARDINER:** Or abolish the lower House. At a referendum most people would prefer to abolish the lower House.

**Mr GREEN:** Yes. I can see why. I think Sweden did in about 1972 but there's very few examples of it. They've normally just abolished an upper House.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** But apart from the obstructiveness of the major parties in Constitutional reform you don't have a theoretical objection to a more inclusive single house.

**Mr GREEN:** I have no objection to that. As I said, the one thing you'd have to do is, you'd have to deal with checks and balances. The New Zealanders, when they adopted MMP, took the process very seriously and their Parliament and their committee system looked very seriously and it's quite a thorough system they've gone through in implementing that system. The parties had to deal with the fact that the electorate forced a change to the electoral system on them even though they didn't really want it, so the public wanted them to change their ways and they did, but we haven't had that.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** You'd say that's fairly successful as a democratic system in New Zealand.

**Mr GREEN:** The big difference between New Zealand and Australia is New Zealand doesn't have states and it didn't have an upper House. In New Zealand when they engaged in a vast amount of economic change in the 1980s the thing that fractured over there was their political system and their party system fell apart. In Australia because of the Senate, because the States reform was much slower and many of the reforms which New Zealand implemented very quickly and broke their political structure had to be introduced over time here and so our political party structure hasn't broken apart because of economic change in Australia because it was done more slowly because of the checks and balances provided by the Senate. In New Zealand it was a one chamber Parliament where cabinet just did things overnight and that's the voters objected and that's how they got their new Parliament.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Perhaps after a rubber stamp Senate after 1 July we might see some changes in the political thinking here, do you think?

**Mr GREEN:** You've used the word "rubber stamp". A government has been in office for four terms I don't see why it should be denied a majority.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Right, but there could be a one chamber house with the Hare-Clarke system of smaller electorates presumably.

**Mr GREEN:** If you wanted it. We had a Hare-Clarke in the 1920s in New South Wales. It was generally abandoned because the electorates were so large. You're talking about lower House electorates of about 45,000 now and if you kept the same numbers you're talking about electorates of 220,000 people to elect five members.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** You'd be talking regions wouldn't you?

**Mr GREEN:** Yes, substantial regions. I don't see it's practical and I don't think it's actually within the terms of this inquiry either.

**CHAIR:** No.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** If that's possible I would get elected.

**CHAIR:** The question is, is it really within the terms of reference of this Committee?

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Can I ask you about lodged tickets from the upper House? There's two ways that the electoral reforms of whatever year it was, changed

the system; (a) they got rid of lodged tickets; and (b) they changed party registration procedures; and that in the 2003 election got rid of the small parties that had gotten elected by flows of preferences. Do you think that party registration alone would have been adequate to have achieved that result?

**Mr GREEN:** It soon would have the size of the ballot paper but it still would have allowed strange deals on preferences. When you're electing a 21-member chamber in our system you're going to get a pretty proportional result out of it anyway. The result in 2003 with very few preferences were far more proportional than in 1999 when candidates got elected from very, very low quotas because of preference deals. Parties can influence preferences under the new system but the only preferences in the count under the new system are those filled in by voters themselves. There's no argument about deals in smoky rooms, there's no strange show and tell deals going outside the front of the Electoral Office, so I think the new system is preferable to the one of lodged ticket votes.

**CHAIR:** Okay.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** So you don't think parties make intelligent decisions about where their voters' preferences will go to like-minded candidates.

**Mr GREEN:** I would point to that table which indicated that your voters didn't seem to like the preference ticket you were trying to encourage them to follow.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** As the person who got the highest below the line vote in the 1999 election I would argue that my voters are the most discerning.

**Mr GREEN:** I'm sure that's right to be honest - not that they're discerning - but I'm not sure you got the highest vote.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** I think you'll find it is with Egan coming in second.

**Mr GREEN:** I would like to point out that Pauline Hanson actually at the last Senate election got the highest below the line vote I've ever seen for anybody as a candidate in the Queensland Senate, which I thought was quite impressive, especially for people who said they couldn't count. If I can find my 2003 election results--

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** 1999 you need.

**Mr GREEN:** Using my 1999.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** I said I got the highest below the line vote in 1999.

**Mr GREEN:** I see, sorry, I was thinking of 2003.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** No, I wasn't standing.

**Mr GREEN:** I think if you check 2003 you will find Pauline Hanson got the highest primary vote below the line of any candidate in modern times.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** That may well be right.

**Mr GREEN:** Democrat voters do tend to vote below the line. We know that.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Yes, of course, more intelligent.

**CHAIR:** That may have nothing to do with it, however next question.

**The Hon. DONALD HARWIN:** I think on that note I might move to a question myself.

**Mr GREEN:** There's an old about vote counting and Don Chip and he said, "We represent

people who can't make up their mind and we intend to behave that way."

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** It was a cartoon though; it wasn't a quote.

**Mr GREEN:** It was a cartoon, yes.

**The Hon. DONALD HARWIN:** Antony, I noticed another part of your submission in terms of removing entrenched provisions by referendum, a reference to the issue of the death of candidate.

**Mr GREEN:** Yes, certainly.

**The Hon. DONALD HARWIN:** I wonder - because that's something that we could look at doing again if we're going to move on the random sampling, so I wonder if you'd just outline what the current situation is, in terms of the entrench provisions, what if you're aware is the situation with Senate candidates in analogous elections; and do you have a recommendation?

**Mr GREEN:** The provisions under most other Acts are that if a candidate dies then the first stage of the count is to exclude that candidate and distribute the preferences and then it proceeds as normal. That step is not in schedule 6 of the Constitution Act and therefore you can't put something in the Electoral Act to do that because it's just not allowed. It is the reason why, at the last election, the special provision was put in there about allowing a party to have a second preference and that was on the basis that if a party had 15 candidates and a candidate died or was disallowed in some way, then that vote would have less than 15 implied preferences and therefore a vote above the line would potentially be informal. That's why all parties had to lodge a second preference in case they lost a candidate in some way.

If you take this stuff out of the Constitution and make it a normal Electoral Act you can put in a provision there to deal with the death of a candidate. Just also on that, the thing about having 15 candidates that must appear currently, or 15 to 21 candidates, is that it's implying preferences below the line. Again, it's the number of preferences indicated there is entrenched in the Constitution. You had to stand 15 candidates to ensure that there were no preferences between groups and to be sure you met this 15 preferences requirement in the Constitution. There might be other ways you may cut the number of preferences required.

**The Hon. DONALD HARWIN:** Given that the provision relating to 15 is a hangover of the situation that applied in 1978 when there was the first direct election, i.e., 12 year terms - in fact I should say they were 9 year terms in 1978 but they became 12 year terms - is there a case for changing that number 15 to another number?

**Mr GREEN:** I think there's an argument for lower it. If someone is voting for a party and they don't want to stand 15 candidates, they want to stand five candidates because that's all they can possibly elect, then perhaps that should be an allowable vote; one above the line and it's just the five candidates in that ticket. It will cause a potential increase in the number of exhausted preferences. It also creates the problem - Ed Hume is not here this week unfortunately - but at the Constitutional Convention Ted Mack stood two candidates, got enough votes for three quotas. That would create a problem under the New South Wales Act if someone had enough votes for three quotas but only stood two candidates, you'd basically have a whole bunch of votes just disappear as exhausteds.

**The Hon. DONALD HARWIN:** So you wouldn't see any case for increasing it to 21 or is it just the case it has no practical significance?

**Mr GREEN:** I don't think it has any practical significance because it's settled on that no candidate or not party would ever win more than that many preferences.

**The Hon. DONALD HARWIN:** I suppose it's also a hangover from the elections in 78, 81, 84 and 88 as well where there was no above the line voting.

**Mr GREEN:** That's right yes. It's a provision which is hanging over from there. Certainly, the main problems are caused and some of the funny provisions which were put there in 2003 were to

get around this death of a candidate problem and to get around the minimum number of preferences required. I thought the provisions that were introduced were skilful in getting around the problems of schedule 6 of the Constitution. It's possible you might take out that minimum number of preferences, out the Act there, but I suspect the Labor Party would prefer to continue to see that entrenched.

**The Hon. DONALD HARWIN:** That it be at least 15.

**Mr GREEN:** Yes. There are relatively generous provisions there for people who make numbering errors, which are entrenched there as well, so I'm not too concerned about that. The standard and people do like to have, I should only have to vote for one candidate, but the system is more proportional and if you've got 21 vacancies you'd normally have 21 votes. In Tasmania where there are five vacancies there's five preferences you must fill in. In Victoria they have five member Legislative Council regions, you must fill in five preferences, so that would be understandable but in the ACT the ballot paper says, you must fill in five or seven preferences but the formality rule is you must only fill in one preference, so they have a very low informal vote. I have no strong opinion on that.

**CHAIR:** There was a recommendation or some comments that the Robson Rotation should be implemented in the elections in New South Wales for the Legislative Council this would involve rotating both the parties and the candidates within the parties. Do you have any views on whether this would be feasible and appropriate?

**Mr GREEN:** In Tasmania they print the candidates - if they've got a seven candidate field, they print them in seven different orders. In the Act they had an election I think in 95 and the Labor Party in a seven member electorate stood seven candidates who were equally unknown to the electorate and because of Robson Rotation achieved roughly the same vote. Then the order of the ballot papers basically resulted in one person getting elected ahead of someone else, just simply because people filled straight down the ballot paper because all the candidates were equally unknown. As a result, this was called a linear vote where people just voted down the column whatever the order it was and there was great concern amongst the really serious Hare-Clarke advocates about this and they increased the number of rotations and I think at the last ACT election there were 420 versions of the ballot paper which is seven by six by five by four by three.

If you did this with 21, I'm not exactly sure but it's a very, very large number of versions of ballot papers, so I cannot imagine that you would go anywhere near that in a statewide electorate because you would just be - I'm not sure how many you would have but you have a lot of versions of ballot papers. Actually, you may actually end up with more versions of ballot papers required than there are voters in the state, so I don't know, 21 factorial is a big number. I don't know what it is.

I recommend against that. The other thing is, as I said earlier, we're electing the upper House where people's focus on candidates is in the lower House, it's generally a party vote in the upper House. If you go back to the 1980s before party names appeared you will find that Fred Nile used to pole very well, he had a name on the ballot paper which was quite well-known. In Queensland in 1980 the idea of putting Florence Bjelke-Peterson on the ballot paper was her name was well-known and took up a lot of space and people would vote for her. You will find that the Christian Democrat vote has not been as high since party names went on the ballot paper simply because can identify who the other parties are where previously Fred was basically the only other candidate they knew apart from the major parties they got How to vote cards for. I think that people are voting on party basis and as long as party structures are relatively democratic and are producing a list of candidates for the ballot paper in the order they want them I see no reason to go introducing the artificiality of Robson Rotation when people aren't voting that way.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Do you think they should have Robson Rotations of the parties' lists then across the ballot, not just the candidates?

**Mr GREEN:** Yes, I think you will find some resistance to that. It gets very hard to tell your voters, vote 1 box vole column E or something. You can get into too much rotation. If you're going to start rotating the columns on the ballot paper, you can rotate the lower House ballot papers as well. I don't think the donkey vote is as big as it used to be and if you keep the ballot papers at a manageable size I think it's reasonable. It is at most 1 per cent, that's what Peter Breen got in 1999.

He got 1 per cent top column on a giant ballot paper he got 1 per cent of the vote. I reckon that the donkey vote is between half and 1 per cent under normal circumstances.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Antony, do you think if we get all parties and the Government and Opposition agree to put a referendum to amend that schedule 6 and move it into the Electoral Act that it would be feasible or possible to then use that system at the next election in conjunction with running it at the same time. Would the Electoral Office be able to cope then if the change was approved, if it's legally possible?

**Mr GREEN:** Yes. The legality question is whether you could conduct the referendum and then count the votes using the new system. I'm not a lawyer but it just strikes me that the courts would take a lot of the procedures in schedule 6 as being just procedures and if all you're doing essentially is changing the method that the random sampling is done then it would not have a significant change on the outcome of the election, then I think a court would allow it if it's not going to significantly alter the result by using a different counting system.

**The Hon. DONALD HARWIN:** Leaving aside the legalities, do you see any other, either practical administrative problems, or what's your sense of how it would be received generally within the community?

**Mr GREEN:** If a proposal was put up based around, we're changing the counting procedures for the Legislative Council because currently you cannot guarantee to get the same result if you counted the votes twice, that there is a fundamental flaw in the procedures, and because it's entrenched in the Constitution we have to have a referendum to change it, then if you stuck to changing the procedures in such a way that you only dealt with these administrative problems and you do two things; (1) deal with the administrative problems; and (2) bring it in line with the Senate. If you're doing that then I think you can do it. That was the background to the 1991 referendum, which you'd remember, Don, is that they brought most of the procedures in line with the Commonwealth Senate except for the referendum ballot paper, which you know my views on.

**Mr CORRIGAN:** I have a question in relation to the computer count.

**Mr GREEN:** Yes.

**Mr CORRIGAN:** Are you familiar with the problem that occurred which caused the computer system to breakdown? Have you in any way inquired into why it happened? Are you satisfied with the explanations you've received?

**Mr GREEN:** The explanation I had - and there's a detailed explanation in the Electoral Commission's submission and they can give you more detail - the counting systems that are used are basically in two parts; one is a data entry system, which is to computerise the ballot papers; the second is the counting procedure programs. Basically, at some point when you do the count the data is striped, the valid preferences are striped out of the data entry system, transferred across to the counting system and then the count starts. As far as I understand what happened was, some of the ballot papers they were trying to put in had ticks and crosses and they had a confusion about whether a field was blank or had zero in it and computer programs can get very unhappy if you mix numeric and alphabetic data. If it's expecting a number and it gets a character it will object if you haven't written your program properly.

As far as I understand that was the major problem, they had done data entry from ballot papers which had some alpha-numeric spaces and other sorts of characters in it and the program to convert it over to the counting system got very upset because it had the wrong type of data in there. As far as I understand, they had to basically replace spaces with zeros before they could transfer the data across and then the counting system started. As far as I understand, it was simply to do with this transfer from one side to the other.

I think I made the point in my submission they had to write that counting system with different ways of operating. To test that the counting was correct they had to actually write a system which would do a fixed random sample and then they can test and test and test because if they ran the random sampling they could never test whether the calculations were correct. They first off had to

write the system with a fixed set of data - a fixed random sample - and then test it to check the calculations were correct and then they had to do it again with the random sampling. As far as I understand, because of their concern about running this software, until they hit the big magic button they hadn't actually run it on the complete set of data in the data entry system, and that's when they met this slight error. It really was. It was in this transfer program and it was just that the data was alphabetic instead of numeric and it caused the thing to fall over. I think it's as basic as that.

Basically, the difficulties and the complexities of the system meant they hadn't caught it before and they should have caught beforehand but it's a very complex counting system.

**The Hon. DONALD HARWIN:** You're satisfied with the explanation that was given by the State Electoral Office and you have no further cause for concern.

**Mr GREEN:** I'm satisfied - that was a conversation I had with the programmers who I was dealing with endlessly because of getting the data feeds from the Electoral Office for the election night and they were also responsible for that and they explained it to me, it was just the data was the wrong type. From having written programs for many years I know exactly what they can do and, as far as I understand, that's basically what it was. It didn't impinge on the count. I think just one extra odd provision which applies in New South Wales - and you might ask Colin Barry this, I think it only applies in New South Wales - if you number outside of your box on a ballot paper it doesn't count and you've probably all done scrutineering here.

In other states if you cross out the number and put another number inside it's still a valid sequence, it counts. In New South Wales because of some court ruling it doesn't count and I understand that was also one of the problems they had in the data entry, was how do they enter in these numbers - you've just entered in a number there but actually that's going to be informal because you can't enter that number. I understand there were some problems with that in the data entry is that, someone was trying to data entry these numbers but there was a question of that preference was formal or not, but once you data entered that number, how was the computer to know whether it was formal or not, so they were pulling votes and determining what should and should not be entered. That would be one provision I think should be looked at in New South Wales to bring in line with other States is, if someone has just corrected their ballot paper with a number it should count.

**CHAIR:** Are you finished, Don?

**The Hon. DONALD HARWIN:** Yes.

**The Hon. JENNIFER GARDINER:** You've mentioned the WA Electoral Office in some respects - I'm just wondering, what do you consider to be the benchmark Electoral Office that operates the best, given its resources around Australia?

**Mr GREEN:** South Australian Electoral Office is a very efficient Electoral Office and so is the Western Australia Electoral Office. Victoria has always been very well resourced compared to other States and it's got a much larger budget. I look at the South Australian and Western Australian although they're quite a small State but they're very efficient Electoral Office and I've always found very helpful. I'd say South Australia. I think Don's had some dealings with South Australia in the past. They have some very good research people there and policy people and they're very efficient in their counts. I found an error in one of their annual returns one year and they were terribly embarrassed and they said, "We hoped you wouldn't find that." When they had to do their two party preferences by booth they rewrote all their procedures and it would be very good for the Electoral Office to look at how the other States do some of those procedures in terms of counting because it's done very thoroughly and everyone's got a good handle on how the figures work.

**The Hon. JENNIFER GARDINER:** Just with respect to the upper House, do you have a view on threshold quota as is used in, say, the German Parliament and so?

**Mr GREEN:** Thresholds tend to be used in countries like Germany and New Zealand, MMP nationwide electorates. The thing you've got to remember - and I mentioned d'Hondt electoral system earlier and that's got a bad name in Australia because the ACT modified the d'Hondt system, which was used in the late eighties and early nineties. The d'Hondt electoral systems have two very

important differences from Australia, they don't have preferences and they don't have quotas, and when that bill went through the Senate no-one understood that and so they put quotas and preferences into it and the counting system became impossible.

The systems that have a minimum quota of the d'Hondt-style systems, where there is no minimum quota for election, is they actually put an artificial one in. There are other ways of achieving that but I think our systems works where we cut out the preferences and the system is quite proportional. I would discourage moving towards that. I think the last election showed how we can do it without a minimum quota. I'm soon appearing before the Federal committee, no doubt the same issue will be raised there, and I will raise with them that, if they got rid of ticket voting then they wouldn't have the issue where a candidate couldn't get elected from a very low quota. Our concern is candidates elected with almost no primary votes who then get elected on preferences. That occurred in 1999 and we fixed it in New South Wales.

If the Federal Parliament wants to fix their Senate system I think they need to look at something to do with preferences in the same rather than adopting an artificial quota because, what an artificial minimum quota does in, say, the Senate, if you were a major party you'd do a preference deal with every little party on the ticket because you know they're all going to be excluded because they couldn't possibly reach the minimum quota. It would also encourage parties to set up front parties. Ticket voting is a think that's distorted and made the quota preferential system work badly in the last 20 years. We've got away from it New South Wales by moving towards, if a party doesn't get enough primary votes, it doesn't get elected because you can't get elected on preferences under our system now. I think that's the way to deal with it. If a party gets enough votes it will get elected, if it doesn't get enough primary votes, if you cut the number of preferences, it won't get elected.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** This inquiry I don't think deals with the same extent but there's been a big issue in Federal issues, is the governance of political parties. You didn't mention it in your submission. Do you have any view on the governance of political parties?

**Mr GREEN:** It's certainly case that under the Federal Act at the moment, what happened with Pauline Hanson could happen under the Federal Act because they haven't amended the procedures in 20 years. Before the 2001 election there was a big inquiry held into voter rorts in Queensland, which was run in conjunction alongside the Shepardson Inquiry, it was a great political exercise. In Queensland after the Federal and the State inquiry they actually amended all their Electoral Acts and have given the Electoral Commissioner oversight of the Constitutions and the preselections, so they've actually reformed it. Nothing has happened Federally, despite the inquiry that occurred.

New South Wales has tightened up the provisions, certainly. You must have members; they're audited; there's a deposit fee; it's much harder to set up a false party. I do think the 12-month rule I think is far too onerous and just on that, the 12-month rule you must register a party 12 months after an election. I don't agree with it in State Government but I won't go into that argument. It certainly should not apply to the Local Government Act. It is ridiculous if you want a party in Local Government you've got to register it 12 months out because issues arise. I think that's the worst aspect of the provisions. As far as internal matters of parties, I think parties have had to start tightening up on their own rules and procedures over time. People used to say that internal party matters were not judicable. They were always judicable but parties used to find a way to get them out of the courts before the courts ever ruled.

The case with One Nation is that the internal politics were so fractured that they ended up with the courts making a decision. The case of Hanson - the civil case that originally started the whole criminal prosecution - was what happens when a party's internal dispute is not resolved and the civil courts are forced to make a decision. The Ralph Clarke case in South Australia is the only major party case, which has gone all the way to a judgment. Nearly every other case where someone launches proceedings something is resolved so that the matter is withdrawn.

**The Hon. DONALD HARWIN:** Thornley v Heffernan is another case you can have a look at.

**Mr GREEN:** Yes. Unless someone can say there's something that needs to be done in this

area I think the State has done enough to ensure that the parties are validly registered and they do have members. I think there are some provision in terms of how far ahead of elections they've got to be registered, I don't agree with, that's for others to make a decision on, but if you're going to ask the Electoral Commission to start intruding on internal party democracy you're going to have to insist on preselection ballots and things like that. The parties that struggle with those are the small parties. How do the Greens decide on their candidate in Gordon or Murray-Darling? They probably haven't got any members so they'd essentially put one in there. You'd probably have the same thing with Australian Democrats. You often don't have a party membership in an area.

I think there is one provision, which you might look at. Central nomination is one of the reasons why there's more candidates appearing on ballot papers. I think this is a particular issue with Federal politics and why the informal vote rate has gone up. Central nomination means a party with no members in an area can nominate. I was rung up by the Albury newspaper at the last State election and there was Australians Against Further Immigration, One Nation, the Democrats and the Greens had all nominated candidates, none of them lived in the electorate, they all lived in Sydney and they were complaining about that. That's allowed on a central nomination and perhaps if there is a concern about - I think one thing about the number of parties candidates appearing on ballot papers is to do with central nomination, and the fact that parties are able to nominate candidates from outside with no local support, just so they can get on the ballot paper, and that is one of the reasons why there's been an increase in candidates in recent years.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** You don't think though that the general governance requirements of political parties should be as stringent as, for example, the companies law in the sense that it currently isn't. It's not as regulated.

**Mr GREEN:** There's a lot of shareholder activists who argue that companies are terribly undemocratic as well and there's no sense of democracy. You go and look at an average company's ballot paper and sitting directors are marked and stuff like that, so I think in terms of internal elections parties have their problems. I'd leave it to the courts unless you've got something specific you want to legislate on and I think certainly in Queensland parties Constitutions are now available - which is amazing - party Constitutions are available on the Queensland Electoral Commission's web site. I think that's a good step forward because there are many people who are members of parties who can't find out their party's Constitutions.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Do you think that should be adopted here?

**Mr GREEN:** It would be nice. It would require a provision of the Act here but in Queensland, for internal party disputes, the Electoral Commissioner has been given the first step of appeal and beyond the Commissioner it goes to the courts. What you're talking about would be, in a sense, some sort of provision like that, where the Electoral Commissioner is the first point rather than the courts.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Do you think that's a good thing to do?

**Mr GREEN:** I think the only party it would help would be One Nation because it would save it from spending all their public funding on court cases.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** On that note, do you think generally though it's a good idea to have the Electoral Commissioner able to be the first point of call for internal party disputes, such as, the one in Wentworth or wherever?

**Mr GREEN:** Look, potentially, but you've actually got to work out and it has to be thought through thoroughly before you do something like that.

**The Hon. DONALD HARWIN:** You mean the Bondi branch of the ALP in Wentworth.

**CHAIR:** Thank you very much.

**Mr GREEN:** If there are any further queries or you have any specific things I'm quite happy

to help. I certainly hope to publish this data on the 2003 ballot papers before too long which will be of interest to some members.

**CHAIR:** Thank you for providing us with all that information.

**Mr GREEN:** Thank you.

**(The witness withdrew)**

**(Luncheon adjournment)**

**CHAIR:** I've been advised that you've been issued with a copy of the Committee's terms of reference and also a copy of the Legislative Assembly Standing Orders 332, 333 and 334 that relate to the examination of witnesses. Is this correct?

**Mr BARRY:** Yes, it is.

**CHAIR:** You've all received a copy of that.

**Mr DECELIS:** Yes.

**Mr JESSOP:** Yes.

**COLIN ANTHONY BARRY**, Electoral Commissioner for New South Wales, Level 20, 207 Kent Street, Sydney, affirmed and examined:

**BRIAN VINCENT DECELIS**, Manager Election Services at State Electoral Office, Level 20, 207 Kent Street, Sydney, and

**TERRENCE RICHARD JESSOP**, Manager of Non-Parliamentary Elections at State Electoral Office, Level 20, 207 Kent Street, Sydney, sworn and examined:

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

**Mr BARRY:** I would, thank you, Madam Chair. I have been in the position as Electoral Commissioner for New South Wales since 1 July 2004. Prior to my appointment to that position I was the Electoral Commissioner in Victoria since 1999. Committee members will be aware that Mr Wasson was the Electoral Commissioner at the time of the 2003 general election; Mr Wasson sadly passed away in June 2004. As I was not in the position of New South Wales Electoral Commissioner at the 2003 general election I request that there may be some questions that I'll have to defer to either Mr Decelis or Mr Jessop as those two officers were working at the State Electoral Office at the time of the last State election.

Under the direction of the Electoral Commissioner Mr Jessop on my right managed the operational arrangements in connection with the Legislative Council count so he may be able to answer any particular questions that you have in regard to that. I'd also like to make a comment about the recent review of the State Electoral Office by the Council for the Cost and Quality of Government. Since I've been appointed to the position of New South Wales Electoral Commissioner the Council for the Cost and Quality of Government has completed a review of the State Electoral Office, recommendations have been made to the Budget Committee of Cabinet and the Premier has announced a number of matters and findings relating to the Office.

The May budget, for example, the State Electoral Office was granted an additional \$2.1 million in the financial year 05-06. These funds have been allocated as a result of the Council's review and this funding will enable the State Electoral Office to provide important strategic information to stakeholders prior to the next election and will enable the office to be better prepared in my view for the next election. The SEO is currently in the process of implementing a new organisational structure that will provide for an additional 17 permanent ongoing positions.

In terms of the SEO's submission to the inquiry the submission was written prior to the completion of the CCQG Review, so I just ask Committee members to bear that in mind.

By way of summary to our submission, the key points relating to the terms of reference 1(a), the role of the SEO and the Electoral Commissioner, New South Wales has a complex piece of electoral legislation, that within it there are quite complex relationships between the Governor, the Electoral Commissioner, returning officers and polling officials and indeed I would point out to Committee members there are what I would call blurred lines of accountability. This situation was brought to the attention of the reviewers in the CCQG review.

Of course it's come about not through anyone's fault, it's come about as a result of an old piece

of legislations that's been amended on many occasions but nobody is standing back and looking at the legislation with a view of how these important office holders who are mentioned throughout the legislation relate to each other. The key points in the SEO's submission in relation to terms of reference 1(b), consistency of procedures used by returning officers, in a sense falls out of the comments that I've made before. The SEO is well aware that in the past there has been inconsistent advice offered by returning officers and certainly training and support for returning officers needs to be increased in preparation for the next general election but I think it's probably become clear to Committee members that in fact returning officers under the current legislation cannot be directed by the Electoral Commissioner.

It is considered that returning officers should be responsible for the administrative matters relating to the conduct of an election and all the organisational procedures but technical, legal and policy issues really should be the prerogative and the responsibility of the Electoral Commissioner, whereas presently they're not in a number of areas. As I mentioned, the Act provides that the key decisions are in fact made by the returning officers not by the Electoral Commissioner, nevertheless, in the absence of any changes to the legislation, we will establish a clearer line of communication between our office and the returning officers to hopefully minimise inconsistent advice and to hopefully minimise inconvenience to candidates and political parties.

A further key point in the SEO's submission in relation to terms of reference 1.1(c), postal voting, postal voting arrangements at New South Wales general elections are a significant issue of concern in the electoral process. The tight time frame within which an election is conducted in New South Wales, it is one of the shortest in the country and yet we have the largest voting population with some 4.3 million voters. I think it might have been pointed out to you that in fact the time for the Northern Territory election with a handful of voters compared to New South Wales is exactly the same, certainly there are other logistical issues, but it puts things into some perspective. Of course the postal voting issues within tight timelines is also exacerbated by the fact that political parties over the last ten years have become far more active in the promoting postal voting in the electorate than what was the case ten years ago. Again, without a major review of legislation you get a whole lot of practices that were predicated on certain things happening when political parties have become more active in the postal voting arena; it's caused problems for the returning officers and for the State Electoral Office to simply handle the volume.

They key point in the SEO's submission in relation to terms of reference 1(d), pre-poll voting is that when a returning officer's office is not well located within an electorate where there's access to good public transport - and of course I'm sure you'll appreciate that when you're trying to rent temporary accommodation in metropolitan Sydney and you tell a real estate agent, yes, we're very interested in that piece of real estate and by the way we want it for three months you can imagine what sort of reaction you get in metropolitan Sydney - but nevertheless we will try to put pre-poll voting facilities where the returning officer's office isn't well located.

In relation to terms of reference 1(e), confirmation of enrollment; whilst the Act provides that the Electoral Commissioner is responsible for the registration or enrollment of electors, the preparation of lists and rolls of electors and the conduct of elections it also provides that in New South Wales - as it is in most other jurisdictions - that the Governor can enter into an arrangement with the Governor General for a joint roll arrangement, and in fact that is the case in New South Wales, so there is a joint of roll arrangement with the Australian Electoral Commission and the Australian Electoral Commission deals with and handles all of the enrollment matters in connection with Federal, State and Local Government in New South Wales.

Whilst the Electoral Commissioner has regular meetings with the Australian Electoral Office for New South Wales, nevertheless, a lot of the operational decisions have in the past been left to the Australian Electoral Commission. The SEO's submission deals with the issues associated with the counting of votes in the Legislative Council election and provides a background to the method of how those votes were counted. The submission also explains how changes to the Act have changed the way in which the legislative Council elections are conducted and votes are counted, including the random selection of ballot papers.

The submission identifies how the problems of the 2003 Legislative Council election emerged and explains that there were two separate problems, both of which delayed the count in the process.

The first problem related to disorganised index tables in the computer system which prevented the pre-count process from proceeding and the second problem was a result of the entry of non-preference data, that is zeros, during the data entry phase which the software did not recognise as valid preferences and caused a number of formal votes to exhaust. The entry of zero during the data entry phase was to identify a preference written outside a square on a ballot paper. The submission explains how these problems were rectified and how the preference data remained secure throughout the entire process.

That is my opening statement.

**CHAIR:** Can I just ask before we go any further, we received a written submission from you, is it your desire for that submission to form part of your formal evidence?

**Mr BARRY:** Yes, it is.

**CHAIR:** Then we might open it up to questions.

**Mr CORRIGAN:** Mr Barry, this morning the Nationals raised a problem and it's a very grassroots level problem of, on the role of returning officer where there was an oversized poster in Tamworth and he said that the National State Director said that they took six days to get that dealt with by the returning officer. I asked whether it was an issue that the returning officer doesn't have power to move as a returning officer. I suppose my question is, does a returning officer have power to physically remove posters from, say, telegraph poles or is that passed onto Local Council?

**CHAIR:** I understood that poster was in the front of a business.

**Mr CORRIGAN:** On a shop, yes.

**Mr BARRY:** The returning officer has the authority to arrange for a poster to be removed. The normal procedure would be that the returning officer would approach the police because it invariably involves going onto someone's private property. I'm advised - but perhaps Mr Decelis could elaborate a bit more - that in the past the police have been very reluctant to drop whatever it is they might be doing to go and, first of all, be absolutely certain that the poster is in breach of the law, that it is oversized, and then to actually take steps to pull it down. This legislation, this is an example of legislations that doesn't exist in the Federal arena, and from discussions with my colleagues in the Australian Electoral Commission having just run an election in New South Wales, this sort of stuff doesn't come up, it seems very peculiar to the legislation that is in New South Wales.

**CHAIR:** It's been suggested to the Committee that the Electoral Commissioner should have statutory powers to report directly to the Parliament. Would you be supportive of a statutory requirement for the Electoral Commissioner to report within say six months of the administration of a general election and then annually on administration of elections?

**Mr BARRY:** I think that it's important that the lines of accountability are made clear in the legislation. I think in coming out of the CCQG review it was - when it took several hours to do a diagram on a piece of paper to describe, who does the Electoral Commissioner report to and who is the Electoral Commissioner accountable to, I think that in itself was a very telling exercise. But I think it's important that, whoever the Electoral Commissioner reports to, that the Parliament should get some formal account of a general election or a by-election. I think that's what you should be entitled to.

**The Hon. DONALD HARWIN:** Mr Barry, in your opening statement you mentioned that Premier announced the findings of the CCQG review, which I had the pleasure to participate in. Could you just outline what the nature of the announcement was and when he announced it, what was said and what feedback there was to participants in the CCQG review?

**Mr BARRY:** I might need to clarify, Mr Harwin, when I said announced it was perhaps more approved a statement of the findings of the review. I only received that this morning, that approval, and it is some 7 pages, it might be - I wouldn't propose to read it all - it might be that you'd like me to table that and submit it to you.

**The Hon. DONALD HARWIN:** Yes, please.

**CHAIR:** If you don't mind that would be good, thank you.

**The Hon. DONALD HARWIN:** Congratulations, the CCQG review seems to have led to an increase in the budget for the SEO. You mentioned the number of positions which I've actually just temporarily missed but I wonder if you now, given that there is a clear dimension to the degree of funding that's been increased whether you're able - and a large number of it is for employee-related expenses - whether you're now in a position to announce a revised structure for the SEO or at what stage are you up to and how is that employee-related expenditure going to be spent?

**Mr BARRY:** The office is in the process of implementing a new structure, we are at about the eleventh hour, there are a couple of final steps to go through before that new structure is implemented but I would be happy to provide the Committee with a copy of that structure once it has been finalised. As I said, it's at about the eleventh hour -I'm talking about in the next couple of weeks.

**The Hon. DONALD HARWIN:** It's just that it strikes me that it might be useful to incorporate that for the sake of completeness in our report when we write it, so I just think it would be helpful if - as soon as it is feasible and appropriate to send it to the Chair that you do that. I notice in the budget papers also there's discussion, in the terms of the capital works budget, an elections system upgrade and also a centralised election management system. I wonder if you could just briefly tell the Committee what they're about.

**Mr BARRY:** The centralised election management system - the office has a number of modules that returning officers use on their local computer to issue postal votes, provide information to electors by having access to the roll but there isn't a centralised database of records and that's why I think in the past the officer struggled to be able to be as responsive to requests for information because a lot of stuff is being held on spreadsheets but there hasn't been a separate centralised repository of what I would call key electoral information. The main purpose of that bid was to in fact develop a centralised election management system.

None of that goes to the Legislative Council application, that has been bedded down and none of that funding is intended to touch the LC count application.

**The Hon. DONALD HARWIN:** Am I right in thinking that the election systems upgrade referred to in the - what I should properly call - the infrastructure statement now rather than the capital works budget, is to support the implementation of the centralised election management system or are they two separate?

**Mr BARRY:** They're one and the same.

**CHAIR:** Just with regards to returning officers, you note in your submission that the Electoral Commissioner cannot direct district returning officers following their appointment by the Governor and that manuals have no standing under the Act. Could you outline some of the problems, the difficulties that have occurred, due to this inability to direct district returning officers?

**Mr BARRY:** The difficulty is that with 93 individual returning officers, each having to run the election according to a piece of legislation which in places is not always clear, you run the risk of having 93 interpretations of how the election should be run. That's one of the most fundamental criticisms, that there is the risk of a completely decentralised system and decentralised accountability.

**CHAIR:** If the legislation was amended to ensure that you had the power to direct the district returning officers and that any directions issued by you were mandatory, what types of penalties do you think would be appropriate for district returning officers that do not comply with the mandatory guidelines?

**Mr BARRY:** From my experience the critical penalty is to be able to dismiss them from office and under the current legislation I don't have that power.

**Mr CORRIGAN:** Mr Barry, in an excellent paper the speaker before you, Mr Green, suggested that a way to deal with the problem of sampling would be to move that part out of the Constitution and into the Electoral Act. Does that seem a sensible suggestion to you?

**Mr BARRY:** Look, that really goes to a pretty fundamental policy decision that I don't know that I'm really well-versed or even if it's appropriate for me to comment on because my understanding is that those provisions are entrenched provisions in the Constitution Act and removing them from their into the Electoral Act I don't think is something I have a view on.

**The Hon. DONALD HARWIN:** Perhaps then if I could take Mr Corrigan's question and rephrase it and perhaps direct it towards Mr Jessop. In relation to the random sampling of the count of the election for the Legislative Council, what practical problems are presented in terms the count of that ballot by having random sampling?

**Mr JESSOP:** In practical terms we've enshrined the random selection of ballot papers in our computer system. When we rebuilt the computer system we built into it a random number generator, which takes care of the random selection of ballot papers. As the Commissioner said, it gets to a policy issue of whether random selection of ballot papers remains part of the election process but it causes us no difficulty in having to undertake random selection of ballot papers during a count.

**The Hon. DONALD HARWIN:** It's been said in evidence to the Committee that in fact having to add on that random sampling software, effectively all that supplementation to the software, contributed to the difficulties that we had with the Legislative Council count last time, is that right?

**Mr JESSOP:** Not as far as I'm aware, no, that wasn't one of the problems that we had. As I said, the random selection of ballot papers has been built into the system, it's simply a random number generator and it creates no difficulty.

**Mr CORRIGAN:** One other question that was raised during evidence, and you addressed it on page 39 of your submission, out of square markings, that's determined by a Court Appeal decision in *Bourne v Murphy & Ors*. Would it be of any benefit to allow more - so we didn't disenfranchise people - to make regulation to allow people to vote outside the square?

**CHAIR:** Where they've clearly indicated their vote perhaps they've put something in a box and then crossed it out and not had enough room and have stuck the number outside the box where there's a clear indication of their vote.

**Mr BARRY:** *Bourne v Murphy* is a challenging decision and it really does raise a lot of issues for the law makers as to whether this is really where you want to be but, from my experience, I've not encountered such a treatment of ballot papers the way *Bourne v Murphy* contemplates them being treated.

**CHAIR:** Can I just go back to returning officers for a minute and the fact that I'm just wondering, we've noted many concerns about different advice being provided by the different returning officers, would you be in favour of ensuring that returning officers refer inquiries relating to specific issues, such as, the registration of how to vote material to the SEO to ensure that correct and consistent information is provided or do you think that, if guidelines are improved, that that would be sufficient?

**Mr BARRY:** In the case of how to vote cards it's the one area that I do have responsibility for that the returning officers don't, so they don't register the how to vote cards, and they have not been trained in providing advice to candidates on any matters to do with the how to vote cards.

**CHAIR:** Any other material where there is an issue with material that perhaps is being handed out - I just note there's been conflicting advice given to candidates, parties and other people by different returning officers, and I'm wondering if there's a way of ensuring that there's a consistency there.

**Mr BARRY:** There is and in fairness to the returning officers they were not given, in my view, the level of training that I would have anticipated, so therefore they're not all that well skilled in

dealing with these sorts of things.

**The Hon. DONALD HARWIN:** Mr Barry, can I just take that same issue up and perhaps reformulate it; assuming that district returning officers can be given a relevant level of training, do you see any practical problems with the registration of how to vote material being, effectively, an either/or option, being done in district returning offices and centrally?

**Mr BARRY:** I would think it would be a recipe for disaster if the returning officers were all empowered to register how to vote cards. Already you've experienced this issue of 93 people providing inconsistent advice. This area of how to vote card registration is one of the most challenging, in terms of legal decision and interpretation, and returning officers, the issues for processing them and making decisions on them in my office are difficult enough, but to devolve that to 93 officers, and I can speak from some experience here because the returning officers in Victoria were empowered to register them, and down in Victoria I know we were moving towards getting more of it brought in centrally simply because of the issue of inconsistent advice. All it needs is a returning officer to make one fundamental wrong decision and you can effectively open up the gates to Courts of Disputed Returns, which I don't think is where we want to be, and they can do it through ignorance.

**The Hon. DONALD HARWIN:** Just on the issue of the election timeline, Mr Barry, which I think you mentioned, certainly in your written submission and also in your opening statement, we have, as you said, a timeline not dissimilar to that of Northern Territory elections by virtue of the entrenchment of the provisions relating to fixed term Parliaments. We heard a submission from Antony Green this morning where he mentioned that the Constitution Act could be amended to give us effectively an extra three days, in terms of the issue of the writs, but still in terms of the effective length of the campaign and the time that people have to cast postal votes, we're still about a week short of the Federal situation, as I understand. I wonder if you are just familiar with other State jurisdictions and, for example, Victoria but also the others - Victoria which you directly know - in terms of just how practical it is to enfranchise voters who live in outlying areas of the State, in terms of postal voting, with the system that we've got.

**Mr BARRY:** I think you've raised the very nub of the point and, that is, that it's almost impossible for a person who lives in rural New South Wales to get a postal vote, to make application, forward it in, get their vote, fill it in, send it back and have it included in the count unless they do it immediately after the issue of the writ because, from my experience in talking to people at the Dubbo by-election, I was quite surprised to learn that in some parts of rural New South Wales there might only be mail delivery three times a week. If you miss the cycle, effectively you lose three days, so there are a lot of people in rural New South Wales who, unless they get their postal vote application commenced right from the word go, anything that they submit in the last week of the election is very problematic as to whether their vote will ever be included in the count.

**Mr PEARCE:** Just to pursue that further, would it be appropriate do you think to have the registered postal voters as applied to the Federal to be consistent at a State level, rather than having a separate formulated roll?

**Mr BARRY:** There are a couple of categories that prohibit the New South Wales registered general postal vote but by and largely 90 per cent - we're talking about the one group of people - I agree with you that it would be better if we had those extra two categories just for consistency but it still doesn't alleviate--

**Mr PEARCE:** It doesn't capture those voters that you've expressed a concern about.

**Mr BARRY:** No, what Mr Harwin has raised I think is the fact that, when people make an application for a how to vote card on a 19 day election and effectively we don't have the ballot papers until something like 11 days before polling day--

**The Hon. DONALD HARWIN:** Do you know of any other States that are in an analogous situation?

**Mr BARRY:** Victoria is very close, although Victoria has 25 days I think as a minimum, but effectively when jurisdictions move away from the 33 days minimum jurisdiction what you're taking

out is that week. You're taking out an extra week in postal voting. That's where the extra time come in.

**CHAIR:** Just with regard to the postal votes, there have concerns raised regarding postal vote applications that are being sent out by political parties, what are your views of keeping candidates outside the application process?

**Mr BARRY:** You mean keeping the registered parties outside the process.

**CHAIR:** Yes, registered parties.

**Mr BARRY:** It's typically not the candidates - the candidates might get some applications for a postal vote and give them out to a few people - but the main political parties have flooded the electorate with direct mail, and we're talking about hundreds of thousands of applications in this very short time frame, it's very difficult to process them or it has been in the past. We're planning some approaches to try and deal with it at the next State election. It's not so much a problem with the political parties sending postal vote applications out to the electorate, the problem arises when they request the voter complete it and return it back, at first instance, to the political party rather than coming back to the SEO, so it adds an additional step into it. Is that clear?

**Mr PEARCE:** Could I just follow that; I'm aware that that's the process it currently does. When the applications come into the average campaign office they are checked for correctness and accuracy and then contact is made with the applicant if there's an error in the filling out, in the signature, et cetera. Whilst it's probably not desirable, given your staffing situation and your average staffing situation in the district returning office, how would you overcome the situation where currently it's almost short circuiting to make sure that by the time you get the application it is correct and filled in and therefore a ballot paper, et cetera, are able to be issued? How would that be overcome if it comes back to your office then your office is then required to contact and you may be talking hundreds, possibly thousands, in a day?

**CHAIR:** Which may slow down the process, yes.

**Mr PEARCE:** It could well add an extra dimension to it and we're talking about a very tight timetable as is.

**Mr BARRY:** What I'm contemplating is - I lived through this issue down in Victoria a couple of elections back and I made the decision then that I wasn't going to run the next election the same way, and what we did is we had some discussions with the main political parties to see whether we could introduce some better arrangements. We would not devolve this completely to the returning officers because you're quite right, they can't handle the volume, we'd centralise the processing. It's really in New South Wales the issue arises in electorates from north of Wollongong, through central Sydney up to Newcastle, this is the main area, we would centralise that processing and have a central data centre, centralised issuing of the postal votes, connected to a mail house. It's the only way you can do it. It's the only way you process them and ensure that people get them but it does take a lot of the pressure off the returning officers and it also means that we can handle the volume because we can run an operation 24 hours a day.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Would you say that you should have the sending out of postal votes really in your own hands not in the political parties' hands at a theoretical level at least?

**Mr BARRY:** I don't have a problem with the political parties if they want to put out political propaganda and attach a postal vote application, that doesn't concern me, what concerns me is the step of where it goes back to the political party at first instance and then is onforwarded to the SEO to process. I accept that getting them sent back to the returning officers won't work because there are 93 offices but coming back to a centralised postal voting operation will work and will work a lot better than what it has in the past.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** You could presumably get optical

character readers and so on to deal with that volume. Is that what you're saying?

**Mr BARRY:** I wouldn't get into the OCR sort of technology, it's worked where we can simply call the elector's name up on the roll but it's the ability behind that, process it and have files sent to the mail house on a daily basis and stuff despatched on a daily basis that enables it to work.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Presumably if you were doing more political education between elections as a gradual process, rather than just all happening in the last few weeks, with all the propaganda going from the political parties, you would have a better chance of keeping up with that situation wouldn't you?

**Mr BARRY:** These are people who are applying for a postal vote at the time of the election and they can't apply until the writ is issued.

**CHAIR:** That's right, these are not registered.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Yes, I see.

**CHAIR:** There is an issue with the registered postal voters. As you know, when people apply to the Australian Electoral Commission they go on a list of registered voters, that does not mean that they are registered because people presume they a registered postal voter across both State and Federal, and we had significant complications with people who believed that they were registered postal voters who were not as far as the State was concerned.

**Mr BARRY:** I think there are three categories - I think I said before there were two - there are three categories of people; an elector who is the carer of a person who is seriously ill or infirm; an elector who is a silent elector; and an elector whose religious belief precludes attendance at a polling place on Election Day. Those three categories are not included in State law, so it's those three categories.

**The Hon. DONALD HARWIN:** Right, so they're not included in the State law so, would you recommend that they be included?

**Mr BARRY:** I would.

**Mr PEARCE:** Certainly over my end of town that would be very significant.

**The Hon. DONALD HARWIN:** Indeed it would. Would there be an impediment to having, in the same way as there is a joint roll agreement, a joint agreement on registered postal voters?

**Mr BARRY:** There's no impediment to that. The only impediment is that the State law has different criteria.

**The Hon. DONALD HARWIN:** Can I just ask one or two others; just in that last answer you were mentioning in terms of the issue of the writ being relevant to the date when postal voting applications can be received, is that right, or issued?

**Mr BARRY:** Received.

**The Hon. DONALD HARWIN:** Received. Given that we have a fixed term, obviously there is a legislative impediment there but given that we have a fixed term, assuming there was no legislative impediment, would there be any practical reason why those postal vote applications couldn't be received before the issue of the writs?

**Mr BARRY:** I think there might be because there has to be a point of where it can start. At the moment the starting point is the issue of the writ.

**The Hon. DONALD HARWIN:** Yes.

**Mr BARRY:** I think if I understand your question, if we remove that legislative impediment, could a person apply knowing they're going to be away three months in advance. On the one hand I could say, yes, that wouldn't be a problem for us, however people start changing addresses and they'll be making an application for a postal vote believing they're not going to be - in my mind there's got to be a starting point.

**The Hon. DONALD HARWIN:** Sure. If there was to be a starting point, prior to the issue of the writs, what would be a practical period prior to the issue of the writs, are we talking two months, three months, six months?

**Mr BARRY:** I think I might take that one on notice if I can.

**The Hon. DONALD HARWIN:** Yes.

**CHAIR:** With regard to the postal vote applications that are sent by political parties, there's prepaid envelopes that are sent with them and are returned to the candidate's offices; if all applications were to be sent back to the SEO, what would be the costs of the prepaid envelopes for the SEO? I guess that's an issue to consider.

**Mr BARRY:** Look, in the scheme of the cost of the election it's not a big amount but in terms of the advantages, it's enormous.

**CHAIR:** So it wouldn't be an issue.

**Mr PEARCE:** Just related to postal votes, also pre-poll voting, and part of the reason for a lot of people applying for postal votes is because of the difficulties with getting the pre-poll, the complications when they arrive at the pre-poll, have you got any suggestions as to how that can be better addressed in terms of the operations both within the pre-poll office and also the placement of pre-poll offices?

**Mr BARRY:** I think it relates to - pre-poll voting and postal voting the criteria is - what all of these things when you read through them, and I was looking at them before, and it must all go to nearly 200 words to tell you these different categories. When you sum them up what they all mean is one thing, I can't get to a polling place between 8am and 6pm on Election Day. That's the criteria. Get rid of all that - one criteria - I declare I can't get to a polling place on Election Day between the hours of 8.00 and 6.00 - that's what they all amount to. That's all a person needs to declare.

**CHAIR:** Because sometimes it becomes very difficult to actually find a category that you fit into when you've got to tick that you're doing a vote.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** It's a frustrating experience from everyone's perspective.

**CHAIR:** I remember myself trying to find a category I fitted into at one stage.

**Mr BARRY:** I think that's the solution.

**The Hon. DONALD HARWIN:** What about I'm a candidate, I might forget because I'm so busy, what about that as a category. Fortunately, I've never been in that situation but I've known others who have.

**CHAIR:** Yes, so stressed out Election Day I might forget to vote.

**Mr BARRY:** If you look at all of those criteria you could simplify the whole postal voting and pre-poll voting by simply saying, the elector declares that they can't get to a polling place on election day between 8.00 and 6.00.

**CHAIR:** Yes.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Could I ask you, you've got quite a lot

in your submission about the poor resource level that you've had in terms of the number of permanent staff, and obviously this chasing postal votes would require more staff as well, and presumably you would have to coordinate staff. You're already sharing a roll with the rolls of the AEC, what is to stop better cooperation with AEC in terms of the use of staff? I know they're under separate jurisdictions and hierarchies but they're only doing elections fairly infrequently and usually out of phase time with you, you don't usually have clashing timetables.

**Mr CORRIGAN:** 2007.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** What, they're going to clash?

**Mr CORRIGAN:** Yes.

**The Hon. DONALD HARWIN:** I think the chances of that are unlikely.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** This could surely be organised not to clash and you could share staff and you'd be able to make a great deal of convenience for everybody. Has it been considered?

**Mr BARRY:** We're having discussions with the AEC about using their staff in the 2007 State election.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** You are, so this is through CCQG is it?

**Mr BARRY:** No, not through CCQG.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** You have other administrative bodies that allow you to talk.

**Mr BARRY:** Yes.

**The Hon. DONALD HARWIN:** You're thinking of COAG, Arthur.

**Mr BARRY:** Yes, in fact I think this will be a great step forward in terms of, not so much for the Legislative Assembly but more for the Legislative Council.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Because you could almost double your resources in terms of sophisticated staff, couldn't you?

**Mr BARRY:** It would provide us with a means of dealing with the Legislative Council, the challenge with dealing with that count that I think would work to everyone's advantage in having access to those people and I feel very confident, from discussions with Commonwealth Electoral Commissioner, that we'll be able to bring this off.

**CHAIR:** Thanks.

**The Hon. JENNIFER GARDINER:** Commissioner, if I could just revert to the rural postal vote problem again. You said that you were surprised to hear in the Dubbo by-election to learn of having three deliveries of postal services in some areas, I think you said further west from there you will find there is only one or two postal deliveries per week, so I'm just wondering, have you been able to turn your mind yet to how - apart from the matter we've just discussed about the issuing of the writ, et cetera - that potential disenfranchising of a significant number of people might be addressed, given that this has been a chronic and ongoing complaint about the Electoral Office for a long time?

**Mr BARRY:** I had a discussion with a senior executive from Australia Post not long after the Dubbo by-election and I asked him about the frequency of mail services in rural New South Wales and I was cautious before when I said I thought about three days a week because I raised with him the issue that you've just raised, where in some places it's only one day, and he told me that's not correct.

He told me that it was - there were no places in New South Wales that had such a low mail service, so I have left it to get back to him with some further discussions about - I'd like to see some maps to see exactly where these areas are but it's the very issue that we're dealing with. We have no control over Australia Post as to how they arrange for the mail to be delivered but when you're trying to delivery postal votes in a very short time period, and not only deliver them to the electors but get them back from the electors within four days after the election, in some cases it's going to fall over.

**The Hon. JENNIFER GARDINER:** Is there any reason why you have to use Australia Post?

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** There's nobody else running around the backblocks.

**Mr BARRY:** I think the best answer to that is that, there might be a little bit of uncertainty and we're not a hundred per cent sure of the legal position about what the method of which an elector has to deliver it back to us is. We know they can be handed into a polling place on Election Day but normally they're posted.

**CHAIR:** But if you can hand it in on polling day you might as well go and vote.

**Mr BARRY:** They can be handed in by an agent.

**CHAIR:** Okay, thank you.

**Mr BARRY:** Look, it is an issue and it's a serious issue and I don't know - I had a lot of discussions with Australia Post in Victoria about stuff to do with postal voting and in the end I just really came up against a brick wall - that's the way they do things and you make your arrangements to fit in with that but in rural New South Wales it is a big problem.

**The Hon. JENNIFER GARDINER:** It is because New South Wales is obviously massively bigger than Victoria.

**Mr BARRY:** Certainly.

**The Hon. JENNIFER GARDINER:** Would it be worth considering using a contractor who was specifically trained and contracted with certain obligations obviously, if Australia Post can't fill the gaps?

**Mr BARRY:** I just don't know how we'd do it because it's not as though we know that these are the people in a particular electorate, a rural electorate, who are going to vote by post. We have to wait until we get the application and then short of the returning officer or someone driving the thing out to people--

**CHAIR:** Unless the SEO took over the role.

**Mr BARRY:** Yes, Brian just said that in rural New South Wales Australia Post actually use contractors.

**CHAIR:** Unless the SEO took over the role of issuing an application to all homes, like candidates and political parties do, and then those who--

**The Hon. DONALD HARWIN:** It wouldn't actually solve the problem, Marianne, because they'd still be issuing them at the same time the political parties issue them.

**Mr BARRY:** What would be better is to encourage more people who live remotely to become a registered general postal voter. Now that may or may not suit political parties modus operandi but also I've got to say when I've run campaigns in the past to get people to become general postal voters, there is a reluctance on the part of some people.

**The Hon. JENNIFER GARDINER:** Unfortunately, some people have said after the 2003 election, who were on the register for general postal voters, that they did not get their paperwork until

two or three days before polling day or they got stuff in the mail on the Monday after the election.

**Mr BARRY:** Remember before I said what I was wanting to put in place was a centralised issuing of postal votes - part of that would be for us centrally to mail out all of the ballot material to the RGPVs whereas in the past in New South Wales that's been devolved to the returning officers, so you're in the hand of these 93 people to do it expeditiously, whereas if we do it centrally, we get the file, we have the roll, as soon as there's a close in nominations, the registered general postal voters are the first ones who get their ballot material mailed out centrally. So hopefully in rural New South Wales that would alleviate that but I have had discussion with Australia Post, "What about if we express post them?" and they said, "You're wasting your money because express post doesn't get there any quicker in rural New South Wales."

**CHAIR:** A matter Paul raised earlier about when the political parties receive the applications for a postal vote and the applications are defective where somebody would ring up the applicant and we've had people drive out to people's homes and get them to - may be they've signed in the wrong place or marked the wrong box or not indicated why they were applying. It was your view it was inappropriate that, I understood in your submission, that the parties had offered the advice. Could you outline your concerns about this?

**Mr BARRY:** I think it's risky for political parties to get involved in that step because they're then becoming part of the electoral administration. They're telling the elector, "Your application is defective." Who says it's defective? Is this the returning officer or is this is a political party?

**CHAIR:** What if it's incomplete? If you receive incomplete postal vote applications, how is it dealt with by the SEO?

**Mr BARRY:** I have to hand to Mr Decelis to answer that one. I'm not sure.

**Mr DECELIS:** It would depend on which way it was defective on how we would deal with it but in the main we would send them back to the elector to correct it.

**Mr PEARCE:** In the timetable in New South Wales, that would inevitably lead to that voter not getting a vote.

**Mr DECELIS:** That's probably the case, given again the timeframe to turn it around and come back again, that's right.

**Mr PEARCE:** You are dealing in a number of cases particularly elderly people, who seek postal votes who are fairly isolated, they might be living in the city but they're fairly isolated. They've got to get signatures witnessed and one thing and another. How is this going to occur?

**Mr BARRY:** I think there's something I didn't explain before and, that is, that in my view the postal vote application in New South Wales is a terribly daunting looking document.

**Mr PEARCE:** It most certainly is.

**Mr BARRY:** The first thing we want to do is streamline it to make it simpler and, again, working on the assumption that there is no Legislative change - if there's Legislative change it will only make it even better. I think we can streamline the postal vote application to take out a lot of the legal jargon, make it a very simple form and I think re-design it, so it's much clearer where people have got to sign and the information they've got to put in. But my experience has been simplifying the application in the first instance.

Secondly, by running it - when you run a centralised processing centre you have a cell that deals with defective applications and contacting the elector to discuss with them on the phone, "Look, your application is defective. We can't process it." You can talk through with them on the phone what the best way is for them to actually get a vote. I don't agree with just sending the thing back to them, that's not the best way to go but it's only when you've got them on the phone you can actually work

through what some of the other options might be and it might be even getting them going down and getting a pre-poll vote which they perhaps didn't understand they could get in the first place.

**CHAIR:** Rather than break for afternoon tea I'll just advise everyone there's tea and coffee up the back, if anyone would like a cup of tea or coffee help yourself, but we might continue with the process of the questions.

There were concerns raised in the submission to the Committee about voting procedures in Consulates overseas, such as, conflicting information regarding the type of identification required and the inability to cast a secret vote. What liaison does the SEO have with overseas polling stations?

**Mr BARRY:** All of the overseas voting is arranged through the Department of Foreign Affairs and Trade. We can do a lot more in terms of making our manuals and procedures - improve them, make them a lot simpler for those staff to use - but at the end of the day it really is the goodwill on behalf of those DFAT staff to process and handle them in accordance with the procedures but I do admit our procedures and manuals have not been as clear as we'd like them to be.

**CHAIR:** It was brought to our attention that the Australian Consular General Office in Shanghai was not provided with computer printed ballot papers by the SEO and votes were required to cast on a handwritten ballot paper. Is this the case with all overseas polling stations and what are the reasons for the lack of computer ballot papers?

**Mr BARRY:** The printed ballot papers.

**CHAIR:** Printed ballot papers, yes.

**Mr BARRY:** We might have to make some inquiries. It seems as though there is a bit of uncertainty as to whether all of the overseas missions were provided with pre-printed ballot papers or not. Can we take that one on notice?

**CHAIR:** Certainly. One other issue regarding the overseas - this is postal voting overseas. The Committee was informed that in one instance ballot papers were not received until after the date of the election. Does the SEO have any procedures in place to assist ballot papers to reach their destination on time? If we can't get to rural New South Wales, it may even be more difficult to get it to somewhere else.

**Mr BARRY:** I think just from Brian and Terry not being sure, I think what this is highlighting is the fact that there haven't been clear project management practices in the SEO in the past, so it's unclear as to how all this was rolled out. It is a challenge to get printed material to those overseas posts but it's certainly not impossible. It's just a question of having the organisational capacity to do it. Were you referring to a returning officer not sending the material?

**CHAIR:** Yes, the person not receiving the ballot papers before the election.

**Mr BARRY:** Look again, if we had a centralised processing centre we would - my view would be anything that's going overseas would go international express post mail. If you just put it in airmail they're not going to get it.

**CHAIR:** In some countries it would take some time to receive, let alone get it back.

**The Hon. DONALD HARWIN:** France, I noted recently, has had a electronic voting trial just for overseas voters. Have you any views on that?

**Mr BARRY:** I wrote two reports on electronic voting and in both those reports - one was in relation to when I visited the United States for the 2000 presidential election and one when I went to the UK to observe some local government elections where a whole raft of electronic voting was being trialled - and I came to the view that there are two areas in Australia - in this case it was in Victoria, but it was probably still in New South Wales - lends itself to some form of e-voting.

Forget the stuff about polling places because already we get people to turn up to polling places and putting e-voting in there isn't going to work, it's not going to add anything. But in terms of people who live in remote New South Wales and in terms of people who are interstate and overseas, giving those folk access to some sort of an e-voting facility - and there was a third group which was people with a disability - but for the people who live in rural New South Wales it may in fact solve part of the difficulty with getting postal votes to them, if they were able to vote in some sort of an electronic format. Certainly it would greatly assist people who are overseas, but that requires obviously a change in legislation.

**Mr PEARCE:** Just on that, isn't there some problem there in relation to being unable to scrutineer those votes in that there isn't a paper record of the vote?

**Mr BARRY:** You can make a paper record.

**Mr PEARCE:** It would then sit in the hands of whom? It would be sitting with the electoral office obviously in the count.

**Mr BARRY:** And it could be, in the case of the Electoral Office, an unidentified paper record.

**CHAIR:** Another issue that's been raised with us is the consistency of procedures used across both State and Federal elections. There needs to be more consistent procedures employed, such as, the rules in relation to campaign material distributed on election day, criteria for declared institutions, and how the boundaries are defined for polling places. What are your views on making rules and procedures, more consistent with those in place at Federal elections, where appropriate?

**Mr BARRY:** I support that. I think that it doesn't make much sense having State and Federal and even local government rules diverging other than where it is absolutely essential and that's why I can't understand why we would want to have things like - everybody thinks that there is a six metre rule for handing out how to vote cards outside polling places, whereas in New South Wales there isn't, but people think there is because that's what they're used to in the Federal election and, indeed, I think having consistency in that makes it simple for everybody because it's typically the same party workers who are working on Federal elections and State elections and they get confused.

**The Hon. DONALD HARWIN:** Can I ask a related question then, Madam Chair, if that's all right and you may want to take this on notice but could you supply us then with a list of Federal Legislation where you think their practices and procedures are not as good as the ones we adopt in New South Wales and also obviously a list of our own procedures which you think would be usefully abandoned in favour of the Federal procedures? Our Committee staff has done an analysis of where the two are different but I'm sure SEO would have that sort of analysis themselves.

**CHAIR:** I think one of the issues is the entrances: In the Federal elections the AEC advises candidates of the number of entrances, gates that will be opened at each of the polling booths on Election Day. Now I know this from personal experience, I had people go out to a school and set up at an entrance only to discover, like after 8 o'clock and this gate's not open, that everyone is entering via another gate and these people are at a gate at the school which they believe is the front of it. The issue is, what logistic issues need to be overcome for the SEO to be able to provide the same level of information for State elections?

**Mr BARRY:** I think it comes back to the very issue that we started with and, that is, the under resourcing of the SEO, that in the past there has been no project identified as selection of polling places. It's been left up to the returning officers to do and it's been left up to the returning officers to liaise with candidates. Whereas my preferred approach would be to have a project officer who, in the next few months, will be starting on identifying polling places, bearing in mind we've had a redistribution for the next State election, where possible let's use the same buildings that are used at Federal elections. Let's capture all that information in electronic form, even take photos of the venues and identify which of the - typically the gates and so forth that are used - and we can provide that information to political parties.

**CHAIR:** How can you ensure then that your returning officers will follow those guidelines?

**Mr BARRY:** I can't ensure it under the current legislation because - well, I appoint the polling places.

**CHAIR:** Right, so you can actually stipulate--

**Mr BARRY:** I appoint them but I can't direct the returning officers to open that gate.

**CHAIR:** Okay, so that's still an issue that would have to be overcome.

**Mr PEARCE:** Just on that, what is the rationale for the appointment of the polling places?

**Mr BARRY:** Service to voters.

**Mr PEARCE:** Service to voters. The reason I ask that is in my electorate I had a polling place at Waverley College, 60 metres away I had one down at St Clair's and 50 metres from there I have one down at Waverley School and then there was none for about a kilometre and a half in either direction north and south.

**Mr BARRY:** As I said to you before, one of the projects that we've identified is the selection of polling places and in the next two to three months we will commence work on it and they're the very issues--

**Mr PEARCE:** What's the current rationale? Is it based on census statistics or is it based on historically where polling places were?

**Mr DECELIS:** Essentially it is based historically where there have been placed but historically, and for other reasons, they are almost solely located in premises owned by State or Local Government premises. I don't think, to my knowledge, we have any premises left that are privately owned other than some private schools.

**The Hon Dr ARTHUR CHESTERFIELD-EVANS:** Churches, or are they only Federal?

**Mr DECELIS:** Churches are currently pushing us away because of public liability issues and some public schools are starting to push us away. Some Local Government councils are starting to push us away and it's all to do with public liability issues, so whilst we're not having great issues with councils and private schools and public schools, beyond that we do have a great difficulty. It is not uncommon, as you say, perhaps to have three - and I would think they are three schools together.

**Mr PEARCE:** Given the importance of the electoral process within our society would it be appropriate for you to have the capacity to identify premises and then, if you like, have the whip hand to acquire those premises for the purposes of polling day rather than having to currently go out and then being told, "No, we can't do this because of this."

**Mr BARRY:** It's interesting that you raise that because I was looking through the legislation to find out where the demand powers came to for these premises to be available and it was pointed out to me there aren't any.

**Mr PEARCE:** Yes.

**Mr BARRY:** Whereas I was familiar in the Commonwealth Act and even in the Victorian Act there are demand powers where any premise that receives part or is wholly or partially funded from the consolidated fund has to make the building available for the purposes of the State election. The issue that you raised before, about in your electorate where there seemed to be three polling places within in such close proximity, I suggest reflects probably the fact that the SEO has not in the past had the opportunity centrally to look at all of this on electorate-by-electorate basis but it's simply been left to

the returning officer to do it once the writ's issued.

**CHAIR:** Yes.

**Mr BARRY:** When you're issuing postal votes and you're trying to employ staff and gather materials you're not going to start--

**CHAIR:** Checking the maps to see where the schools are located.

**Mr BARRY:** There's only so much they can take on. There's other issues about some of the buildings might not be accessible for disabled people - I don't know - but that's the sort of thing I want to look at to rationalise it across the State.

**Mr PEARCE:** I don't think the electorate of Coogee is unique in this regard. I suspect it would occur in most electorates.

**Mr BARRY:** Could well be.

**The Hon. DONALD HARWIN:** Except it's the smallest geographically.

**CHAIR:** Okay.

**The Hon. JENNIFER GARDINER:** Similarly, with the location of pre-poll places, there's been discussion about the problem in the CBD of Sydney, but in the electorate of Murray-Darling, for example, in 2003 the people of Cobar district had been used to being able to pre-poll and then suddenly they rocked up on polling day and there was no pre-poll place at all, so there was one at Broken Hill, one at Hay and one at Wentworth, which was pretty irrelevant. Again, what is the rationale?

**The Hon. DONALD HARWIN:** Not one in the north-west.

**The Hon. JENNIFER GARDINER:** Not one in the north-west of the electorate at all, so what would be the rationale for that? Would that again be possibly an idiosyncratic or resource question?

**Mr BARRY:** I think you're identifying the symptoms of an organisation that hasn't had the opportunity to plan and it's not the case - Brian and Terry have repeated to me - we know we can do a lot better; we just need the resources in the centre to do it better.

**The Hon. JENNIFER GARDINER:** Would you be prepared to perhaps make this a more public process and take submissions from people across the State as to where they might be better located?

**Mr BARRY:** You're talking about pre-poll or are you talking about--

**The Hon. JENNIFER GARDINER:** Both.

**Mr BARRY:** My approach in dealing with the review of polling places is that we will do what we think is our best effort, our cut of the polling places, and I would provide it to the registered political parties and ask them to comment but I don't want to particularly get involved in taking public submissions on them. I'd sooner deal with the political parties.

**The Hon. JENNIFER GARDINER:** Okay.

**Mr CORRIGAN:** Everyone has identified - every person who has made a submission - that the Electoral Office has been under-resourced and you've made that point yourself but I note you said an extra 2.1 million in the budget and an additional 17 positions, you're going through a reorganisation, this will deal with a lot of these issues that have been raised here today, as you've just pointed out, but having said all of that, would you think that we'd need a new Act that would overcome a lot of these problems and would you recommend that way and based on your Victorian

experience particularly?

**Mr BARRY:** I think that if you look around the country it started in Western Australia in the late eighties, Queensland, the ACT, Victoria, Tasmania, have all reviewed their electoral legislation and even the Northern Territory. I think it is regrettable that New South Wales, the principal State, has got legislation in the electoral area that goes back to the 19th century.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** About political advertising, it's been suggesting that there should be an independent body adjudicating the truth of information presented by candidates and third parties, do you have any view on that suggestion?

**Mr BARRY:** Totally inappropriate for the Electoral Office to get involved in truth in advertising.

**CHAIR:** That's true.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** The advertising regulation has been a fairly difficult area in Australia, in that it's had an attempt made in the accreditation of advertising agencies under an old scheme, which was done through Fairfax and the Trade Practices Commission I think in the early eighties, after some pressure from a group named, Bugger Up, you may have heard of. The system was abandoned in terms of general regulation of advertising, for a taste of general public complaint about taste and a more financially substantial one from other advertisers affected, in which there were serious litigation from other advertisers.

I noted that the issue of regulation of content of advertising was being taken very seriously in terms of the two different types of super schemes and there was quite a long article this weekend's paper looking at that. The idea of regulation of advertising by other groups affected doesn't seem ever to be sneered at and the idea of regulation in the consumer interest seems more difficulty in the sense that no-one is willing to put their neck on the line for a consumer, shall I say.

As such, if ASIC I think is pushing the regulation of advertising in the area of types of super fund, for example, what then is inconsistent about the SEO looking at advertising and the mechanisms thereof?

**Mr BARRY:** One of the difficulties in this - and I remember there was a judgment in Victoria I think it was in relation to a Local Government appeal and the judge came down with the view along these lines; that in the political environment there has to be enormous amount of latitude to provide for the cut and thrust of politics and it's not up to the Electoral Commissioner or the Electoral Office to get in there and try and do the job of the elector. It's up to the elector to make what they want of what potential candidates are saying. Once we start to get involved in truth in advertising it's just becomes an endless stream of allegations all in the environment of a 19 day election campaign. I don't think that's feasible.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** There was a case in South Australia where some defamatory statements were made in the press the day before and the candidate in fact lost his seat and the allegations were shown to be defamatory more or less immediately after but that was too late. You don't think there's any place for the SEO in a case like that or to review the validity of the election in that case?

**Mr BARRY:** I think that it's not a place for the SEO but I think if you want to go down that path the solution would be that if a person is convicted of defamation in an election campaign then it may well be that that's the springboard for a Court of Disputed Returns.

**CHAIR:** That's right.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Okay. In terms of political education, which is again if you like - there is a political education fund which political parties get considerable money from and which it seems that contrasts conspicuously, shall we say, with the lack of resources of the SEO in terms of educating people politically. Would you see the SEO as having a role in perhaps developing a syllabus in civics and would you see the SEO as having a role perhaps in more

wide political education, for example, the "Just vote 1" campaign which was run before one of the by-elections, was effectively telling people, not that there was an optional preferential system, but that they only had to vote "1" and in the absence of any information from the SEO that propaganda, which was put around the polling stations, suggested that in fact it was first past the post.

**Mr BARRY:** I think that there is a role for the SEO in the future to identify those groups in the community who - or first of all to identify electorates in the community where there is high informal voting or high under-enrolment and for the SEO to target those particular areas with electoral education and electoral information to assist them in understanding the voting system and to participate in the democratic process. However, bearing in mind that my office is coming off such a low base in terms of capital, resource capital, I don't see us being able to do a lot of that important work before the next State election, although I'd like to see some but I don't think we'd be able to do a lot.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** In terms of the voting records, for example, of the political parties on issues which might be a legitimate item of interest, and which I know is followed very carefully in America by consumer oriented political observers, shall we say, who want to empower the voters, and I understand they're mainly publicly subscribed charities, in a sense, that give voter information. We have a political education fund which funds political parties, interestingly no-one funds the voting record that a voter might use, would you see a role for the SEO in something as basic as that sort of education?

**Mr BARRY:** As I said, I do see the SEO having a role in providing information to the community about how the democratic process works and how to enrol and how to participate, and the various categories of voting with the general postal voter, silent elector, people with disabilities, people who come from culturally and linguistically diverse backgrounds, because in the United States it is also the case that the Electoral Offices, particularly because the election is run at the county level, they provide absolutely zero in terms of voter education, so it is left up to those private organisations and political parties to do so. I do think there's a role for us but I don't think it's going to be able to be rolled out in any sophisticated way before the next State election.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** No, perhaps that's a separate question, is whether you have the resources to do this between now and the next election. The question is; do you think that public information, which that is of course, could be collated on a web site that would allow someone to get neutral information? It seems that the lack of neutral information, even on the public record the lack of availability of neutral information, is something for the thoughtful voter.

**Mr BARRY:** I'm not quite sure what you might mean by "useful information" but certainly our web site is going to be enhanced for the next State election and we hope to be able to use that web site as a vehicle for providing more information about the democratic process and the voting process but not about political parties.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** The voting record is about political parties but it is neutral voter information.

**Mr BARRY:** Yes, results of elections and how people have voted and things like that but not about the parties per se.

**The Hon. DONALD HARWIN:** If I could just move to a different area now, which is the Legislative Council election and various matters, first of all, if I just go to the issue of, should the Committee be minded to recommend random sampling be ditched in favour of another voting system and, presuming that the Government agrees and the Parliament enacts, one of the options that we might consider if we had Crown Solicitor's advice saying that it was possible, would be to have a referendum put at the general election on the issue of effectively taking all that procedural and processed stuff that's entrenched in relation to the Legislative Council count in the schedule 6 out, and implementing, for example, the inclusive Gregory method which is used for the Senate as a way of counting the Legislative Council ballot, and having that introduced immediately, so that the count for the 2007 general election was then conducted under the Senate count. Do you see any practical impediment to doing that?

**Mr BARRY:** I think I'll hand to Terry but I think the issue for us would be that, as you said, if the Government was so minded and if the Parliament enacted, we would effectively - and if there was Crown Solicitor's advice saying that this could be done - we would have to have two computer systems ready to go.

**The Hon. DONALD HARWIN:** And count the referendum first.

**Mr BARRY:** And count the referendum first.

**Mr JESSOP:** I can't add much more to that really because, as the Commissioner said, we would need two systems depending on the result of the referendum. To construct a new system, they don't come cheap. We would have to undergo thorough testing of both programs again -again a huge cost involved there. There is the danger that you would need an extension of the return of the writ, if we've got to wait until the referendum is counted before we can actually start counting ballot papers for the upper House.

**The Hon. DONALD HARWIN:** That actually is what I was getting at, in terms of the return of the writ, do you think it would be possible to do it, if not, what would be involved in having to overcome that problem?

**Mr JESSOP:** I can't sit here and say we could do it. I can't sit here and say we couldn't do it. I would say it would be taking a huge risk to say we could do it not knowing when we're going to get the result of the referendum. We have to roll out a whole lot of logistical resources to be able to count the ballot papers. We'd have to have those resources ready and waiting to go as soon as the referendum result was known. I repeat that I can't sit here and say that it could be or it can't be done. At this point in time I wouldn't say it would be a good idea for me to say it could be done.

**Mr BARRY:** Why don't we take it on notice?

**The Hon. DONALD HARWIN:** You prefer to withhold judgment.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Counting a referendum though must be relatively quick. The LA count is usually finished the same day, is it not, or soon?

**Mr PEARCE:** Up to three weeks.

**The Hon. DONALD HARWIN:** Eight days at the most.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** There are a few disputed electorates that cause trouble but most of the electorates are mostly in the paper the next day or the day after. If it were only, yes or no, that's simpler than any LA count surely.

**Mr JESSOP:** Yes, but there's an issue involved there of timeliness of getting the Assembly result. I'm sure that you would agree that the priority is for the Assembly result to be known as quickly as possible and as accurately as possible. We would not want to jeopardise that in any way to put that aside and count a referendum paper. Given that they're still counting the Assembly ballot papers several days after polling day, at what point do we say, you now cut-off and devote resources to counting the referendum paper?

**Mr BARRY:** We'll come back to you on the logistical issues. Do I understand the question to be that, if we had a referendum at the next State election to change the voting system to the Senate style system, what would be the issues for us?

**The Hon. DONALD HARWIN:** Yes, and in particular in terms of the counting of the next general election result using the method past.

**Mr BARRY:** Yes, absolutely.

**The Hon. DONALD HARWIN:** It's 40 days you have to return the writs, is it? I've forgotten.

**Mr JESSOP:** Forty days.

**The Hon. DONALD HARWIN:** The 40 days, is that a requirement of the Parliamentary Electorates and Elections Act or the Constitution Act?

**Mr JESSOP:** It's in the Parliamentary Electorates and Elections Act.

**The Hon. DONALD HARWIN:** Therefore it can't be entrenched provision so, in other words, if we were to go down that path we could also have presumably a once-off - potentially to make it work - a once-off change to the Electoral Act.

**Mr BARRY:** It might not - let us get back to you because there might not be quite as - when you first hit the issue with us - it might not be quite as bad. We need to have some discussion.

**The Hon. DONALD HARWIN:** Yes, okay, thank you.

**Mr CORRIGAN:** Just on a separate matter again. I think it was the Shooters Party at our last public submissions raised the issue of having - they showed us a faxed return they sent back with all their candidates who'd signed it and it was practically indistinguishable because they had faxed it all around the country because they didn't want to bring their candidates all into one place and sign. Is there any way of overcoming that?

**Mr BARRY:** We think there is and in our planning session we've had some discussions about seeing how we can do that smarter and telling parties how they can do it smarter.

**The Hon. DONALD HARWIN:** In terms of the alternate methods to random sampling that are being looked at, for example, the inclusive Gregory method, the weighted inclusive Gregory method, do you have a view about those alternative methods to random sampling and would you recommend either of them to the Committee, if the Committee was minded to look at an alternative system?

**Mr BARRY:** My view on voting systems is that we should be trying to make the system as simple as possible for the voter and minimise confusion. Because I have not been here as an Electoral Commissioner through a State election, whilst there are similarities with the Legislative Assembly election between New South Wales and Victoria, Victoria never had a PR upper House count although they will have it there next election, so I'm not really able to talk with a lot of authority on this. I would have to defer to Terry and Brian.

**Mr JESSOP:** Again, it's a philosophical question as to what do we think is the better method.

**The Hon. DONALD HARWIN:** Would you prefer to take it then on notice?

**Mr BARRY:** It might be better if we come back to you with something.

**The Hon. DONALD HARWIN:** Yes, thank you.

**The Hon. JENNIFER GARDINER:** Have we talked about voter ID?

**CHAIR:** No.

**The Hon. JENNIFER GARDINER:** One of the witnesses recently at a recent hearing talked about there being some discussion about a Federal-State agreement on voter identification means. Do you know anything about that and what the status of it is?

**Mr BARRY:** I think what you're referring to or that the person may be referring to is that, the Commonwealth has introduced legislation to provide for identification at the point of enrolment, not at the point of voting, so the issue is whether the States will agree to complementary legislation to preserve the joint enrolment process, to have complementary legislation regarding some form of proof of identity at the point of enrolment. Those discussions are taking place and I'm not aware of any

outcome in terms of the Commonwealth discussion with all of the States and Territories but it is on the agenda for discussion.

**CHAIR:** Just with regards to the computer system used to count votes, it's noted in your submission that the problem related to the index tables prevented the pre-count process from proceeding and that this type of problem is not uncommon with databases of the type that was used. Could you outline why this is the case?

**Mr JESSOP:** I'd have to defer to Terry.

**Mr JESSOP:** Why it is the problem?

**CHAIR:** Yes.

**Mr JESSOP:** Look, I have to say I don't have an IT background. I really can't answer questions of a technical nature related to the counting system. If you like, we can take that on notice. I'm sorry I can't answer from a technical point of view.

**CHAIR:** There's a couple of questions I'd like to ask regarding the IT, so perhaps we could give you those questions because that the SEO and its IT contractors did not test all aspects of the system, that would be used during the election count, reflects inability of the SEO to manage the project. What resources does the SEO require to ensure that in future any projects are managed effectively, so there are a number of issues about IT?

**Mr BARRY:** I think the whole tenor of this issue about the LC count; I have managed a large IT development but not from a technical point of view, as a CEO, and what I saw from what has been explained to me as how it was developed here was, there was not enough checks and balances, there were not enough identification of risk, there was not enough opportunity for people who had the knowledge of the business requirements to be taken off their normal day-to-day work and to be allowed to work solely on this project. That's the nub of the whole thing.

We can drill down into the nuts and bolts and we can bring some technical people to explain and answer those questions but the whole nub of it goes to a lack of appreciation of undertaking a major IT development in a mission critical environment by the CEO not allowing the staff with the knowledge to be taken off their main job, and say, you're going to be working on this project for the next six to nine months. No proper reporting steps in place, so that risk analysis could be undertaken, it was just all of that mixed in together created an environment of where it was, look, we think this is going to work okay but no proper testing, no robust testing.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Has there been any suggestion it should be done as an open source development?

**Mr BARRY:** You've used a technical term there of "open source development", I'm not quite sure, what do you mean?

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** In open source the code is public, the source code is public, in other words, what the program is, is public and you can then have comments on it.

**Mr BARRY:** From my point of view I don't have a problem with the code being made available for registered political parties to take it away and come back and tell us whether they think it's right, wrong or indifferent. When I've done that in the past - in fact I found one of my most persistent agitators went away and finally acknowledged that he got it wrong - so I've got no problem with that philosophically. It's a question of who you're going to make it available to and so forth.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** In classic open source of course the whole world has access to it and suggests improvements because there's boffins everywhere interested in that sort of thing.

**Mr BARRY:** What we've got at the moment is, we have at the end of that exercise, we have a

stable environment and stable code and we know it works. My view is that we shouldn't be touching it before the next - assuming there's not legislative change - that we shouldn't touch it before the next Legislative Council election.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Would you make it public then?

**Mr BARRY:** I don't have a problem with that.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** For the State, they might have a copyright on it.

**Mr DECELIS:** That's right. The only difficulty is that part of it which is owned by other people have copyright on it because I understand the ACT do that, they make their source code publicly available. I think you can obtain it on their Internet. My vague recollection is though that it is not entirely useful because those parts that are copyrighted by the software companies is not available, so they do not have the complete software and never will, is what I understand.

**CHAIR:** It was noted that amendments made in 2000 to enable voters to indicate preferences for groups above the line made the previous software redundant. Given that this gave the SEO over two years to ensure the adequate software was in place, what factors contributed to the inability of the SEO to have adequate software come Election Day?

**Mr DECELIS:** I can answer that I think. The changes that occurred in 2000 were the introduction of preferential voting above the line, which didn't exist previously obviously, and we had to redevelop the software to cater for that. We, as far as I'm concerned, undertook sufficient testing to ensure that that worked, and it did. What didn't work was - my understanding is the indexing problem was created by a huge influx of data going to the database at the one time. The other problem was created by entry of inappropriate markings on the ballot paper - zeros as the Commissioner alluded to earlier. The software itself worked. When we ran the count, it ran the count and it ran it successfully. It has since been used for over 100 Local Government elections last March and it worked perfectly. There wasn't a problem with it at all - the same software.

**CHAIR:** The Committee has also received comments that imply a lack of political neutrality by officers of the SEO, what procedures and guidelines are in place to ensure impartiality by officers? This was a comment that was made. Are there guidelines in place?

**Mr BARRY:** There's a code of conduct at the SEO and since I have been Commissioner, and I understand - certainly since I've been Commissioner - anybody who applies and is interviewed for a job with the SEO I raise this issue with them about the need for political neutrality and explain to them it's not like other departments. I ask them do they belong to an organisation, any organisation that could bring their impartiality into question, so I feel very confident and with such a small number of people I don't think - I've not encountered any semblance of anything other than political neutrality.

**The Hon. JENNIFER GARDINER:** Commissioner, I've noted that you've published colourful brochure on the results, et cetera, relating to the Dubbo by-election. Is it your intention to produce such a document in relation to the next general election with this additional information compared to the previous pretty straightforward statistical returns?

**Mr BARRY:** My intention is, irrespective of whether there is - what I would like to see is a change in legislation to make it a requirement that I do so - but irrespective, my intention is to write a report on the administration and conduct of the 2007 State election and I would see it in terms of a number of headings, including areas to do with legislation where there might need to be legislative change, but to provide all that statistical information; comparative information between New South Wales and other States, where it's appropriate; to explain what we've done in terms of pre-poll voting and postal voting, if we introduce a centralised system as I described before. I see it very much as my accounting to the Parliament on how we've administered our stewardship, so to speak.

**The Hon. JENNIFER GARDINER:** I note in that report you've included the two candidate preferred results by booth. Is it your intention to do that for each electorate in a general election?

**Mr BARRY:** I like to do that because people have a people have an interest in it, as long as we can manage it.

**The Hon. DONALD HARWIN:** Why couldn't you manage it? I just found it a source of immense frustration and anger that the New South Wales State Electoral Office seems to be the only electoral administration in the country that can't do this. Let me give you an example: At the last general election where I was conducting or I was part of the scrutiny the State electoral district of South Coast, the returning officer just point blank refused to show me the two party preferred results by polling place in that particular seat and I'm just wondering, why on earth we'd have to have legislation to force the State Electoral Office to do something which every other electoral administration in the country does and which is a source of particular interest to virtually every stakeholder in the political process?

**Mr BARRY:** I think you've raised a couple of things there. First of all, remember where we started our discussion this afternoon about, who is calling the shots? The 93 returning officers run their own race. That's not where I want to be.

**The Hon. DONALD HARWIN:** You're saying that you never receive two party preferred counts from the returning officers.

**Mr BARRY:** I wasn't there. No, I don't know.

**The Hon. DONALD HARWIN:** All right. Can I ask Mr Decelis the same question; are you saying that your district returning officers did not provide you with two party preferred counts per polling places?

**Mr DECELIS:** On a booth-by-booth, no, we don't.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Can I comment that, surely the two party preferred is a construct of political commentators from the results which effectively eliminates minor parties, why would it be your job to provide that particular construct for the convenience of some in major parties?

**Mr BARRY:** It's not just the convenience of some in major parties. There is a broad interest in the two party preferred result from each of the polling booths beyond the political parties.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Yes, that's a media interest though.

**The Hon. DONALD HARWIN:** If it would upset you less, Arthur, perhaps we could refer to it as a two candidate preferred vote, given that it generally--

**Mr BARRY:** It is a two candidate preferred because in some cases - I've done these two CPs where there's been an Independent.

**CHAIR:** Yes, although it's called a two party preferred result in your Dubbo publication.

**Mr BARRY:** It was called two party preferred in Dubbo because it was against two parties, wasn't it?

**The Hon. JENNIFER GARDINER:** No, Nationals and Independent.

**Mr BARRY:** Was it? It shouldn't have been that, it should have been a two candidate preferred.

**Mr DECELIS:** Can I just say, on the night of the election - tally night - we do actually have results phoned in for a two candidate preferred on the night and that's available. The information is actually collected on a polling booth basis, so the information is actually there and that is how the information is phoned from the booth to the returning officer and it's available but previous Electoral Commissioners have in fact chosen not to make it available. I can't explain why they've chosen to do so. It's been a decision they've made but that have in fact done it for it to be available. It is a process

we go through on the night but they have chosen not to make it available.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** It is in fact the final preference count, in effect, isn't it?

**Mr DECELIS:** We do at the conclusion of the election require every returning officer to actually go through, whether they're required to obtain a result by a distribution of preferences or not, to do a full distribution of preferences following the election and it does in fact appear in the statistical return, by district but not by polling places. It's just been the choice of Commissioners in the past, for reasons I'm not aware of, to not make it publicly available.

**The Hon. DONALD HARWIN:** Can I say then in relation to the Dubbo publication which is a great publication, it's good also in respect of the fact that it records the addresses of the polling places, which is another source of ongoing frustration to psephologists, that we often just can't get lists of where polling or we don't keep them and then we have difficulty getting lists of addresses of polling places, so that's easy and it should be in the returns and that's good. Another useful thing to do in terms of those returns would be to put percentages in for the two party preferred but anyway, congratulations, it's a great publication.

**CHAIR:** Are there any other questions?

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Yes. Concerns were raised in a submission to the Committee about the lack of access for people with disabilities to the electoral system, including the ability for some people to cast a secret ballot. Does the SEO have a disability action plan, if so, how often is it reviewed and, if not, are there plans to develop one?

**Mr BARRY:** We are in the process at the moment of going to engage a consultant to drive this process. It is an important part of the next State election. There will be an overarching plan called "Equal access to democracy" which will include people with varying degrees of disability. It's in our corporate plan, it's a major commitment and it will commence in the next financial year, well and truly in time for the next State Election. I will consult with the political parties in terms of how we approach it but it is a major commitment.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** And disability groups presumably.

**Mr BARRY:** And the disability groups.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Can I ask you about the governance of political parties; it's been commented that the political parties have less governance than do companies on the Stock Exchange, would you agree with that proposition and, if so, do you see a role for the SEO in addressing it?

**Mr BARRY:** Can I answer the last question first; a big, no, and we have no appreciation for governance in political parties.

**CHAIR:** I don't think that's got anything to do with our inquiry. I think we'll wrap it up there and I thank you, gentlemen, very much for your time this afternoon. We will get you those IT questions if you don't mind.

**The Hon. DONALD HARWIN:** I think there were a number of questions taken on notice.

**Mr BARRY:** Yes, there are a number of other ones. Can I leave you with a copy of the performance review?

**CHAIR:** Yes, thank you.

**(The witnesses withdrew)**

**The Committee adjourned at 4.00 p.m.**