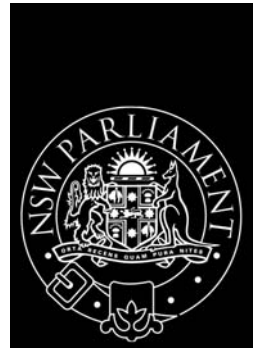


PARLIAMENT OF NEW SOUTH WALES



Joint Standing Committee on Electoral Matters

INQUIRY INTO THE ADMINISTRATION OF THE 2003 ELECTION AND RELATED MATTERS

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Table of Contents

Membership & Staff.....	v
Terms of Reference.....	vii
Chairman’s Foreword	ix
Executive Summary	xi
Introduction.....	xi
The role of the SEO	xi
The administration of elections.....	xiii
Problems with the counting of votes for the Legislative Council at the 2003 election	xxii
List of Recommendations	xxix
CHAPTER ONE - INTRODUCTION.....	1
Background to the inquiry	1
the inquiry process	2
Call for submissions.....	2
Public hearings	2
Study tour.....	2
CHAPTER TWO - THE ROLE OF THE STATE ELECTORAL OFFICE.....	3
Introduction	3
Electoral legislation	3
The need for new electoral legislation?.....	3
The timing of the issue of the writ.....	5
Resources of the State Electoral Office.....	8
Input by political parties in the operations of the SEO.....	11
Electoral Education	12
CHAPTER THREE - THE ADMINISTRATION OF ELECTIONS.....	15
Introduction	15
Improving the lines of accountability for officers involved in the election process.....	15
Consistency in advice provided by polling officials and staff of the State Electoral Office	18
The consistency of procedures used and rulings given by District Returning Officers	18
Clerical errors made by returning officers	21
Consistency in the advice provided by the staff of the SEO	22
Consistency in procedures used by staff involved in the counting of votes	25
Consistency of procedures across State and Federal Elections.....	27

Table of Contents

Postal voting	29
Difficulties for rural postal voters.....	29
Criteria for Registered General Postal Voters	34
Involvement of political parties in the postal voting process	35
How-to-vote material	40
Registration of how-to-vote material with the Electoral Commissioner.....	40
Timeframe for registration of how-to-vote material	43
Cross party support on how-to-vote material.....	44
Display and distribution of election material at polling places.....	46
Information for scrutineers	48
Information about and designation of polling booths	51
Declaration voting.....	55
Overseas voting arrangements	58
Reporting on elections by the SEO	59
Statutory Reporting Powers	59
Reporting of results by booths	61
Nomination process	64
Voting by people with disabilities	66
Security of ballot papers.....	68
Political advertising	69
Voter Identification	71
Confirmation of enrolment and voter registration.....	75
CHAPTER FOUR - THE PROBLEMS OF THE COUNTING OF VOTES FOR THE LEGISLATIVE COUNCIL AT THE 2003 NSW ELECTION.....	77
Introduction	77
Background.....	77
The Legislative Council software	79
Problem Identification	81
Cause of the problems	81
Index tables	81
Entry of non-preference data (zeros)	82
Late detection of the problems.....	82
Resources	82
Index tables	83
Entry of non-preference data	84
Prevention of problem recurrence.....	84
Software development lifecycle	84
Technology audit	88

Conclusion	88
CHAPTER FIVE - THE VOTING SYSTEM FOR THE LEGISLATIVE COUNCIL	91
Introduction	91
Constitutional Provisions	92
Difficulties in having Schedule 6 of the <i>Constitution Act 1902</i> entrenched	94
Legal requirements regarding any proposed referendum	95
The counting of votes for the legislative council	96
Is the current method adequate?	96
Alternate methods for transferring surplus votes	100
Logistical issues with changing the method of counting the votes for the 2007 election	103
Changes to the electoral system that applied at the 2003 NSW election	106
Voting procedures	110
Group voting squares	110
Optional preferential voting	111
APPENDIX ONE – SUBMISSIONS AND OTHER DOCUMENTS RECEIVED	113
APPENDIX TWO – WITNESSES	114
APPENDIX THREE – DETAILS OF STUDY TOUR	115
APPENDIX FOUR – ORGANISATION STRUCTURE OF THE SEO	117
APPENDIX FIVE – SCHEDULE 6 OF THE <i>CONSTITUTION ACT 1902</i>	119
APPENDIX SIX – MINUTES	123
APPENDIX SEVEN – BRIEFING NOTE PREPARED BY THE SEO ON MAINTAINING THE CURRENCY AND INTEGRITY OF THE ELECTORAL ROLL	142

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Terms of Reference

- (1) That a Joint Standing Committee, to be known as the Joint Standing Committee on Electoral Matters be appointed.
- (2) That the Committee inquire into and report upon such matters as may be referred to it by either House of the Parliament or a Minister that relate to:
 - (a) The following electoral laws:
 - (i) *Parliamentary Electorates and Elections Act 1912* (other than Part 2);
 - (ii) *Election Funding Act 1981*; and
 - (iii) those provisions of the *Constitution Act 1902* that relate to the procedures for, and conduct of, elections for members of the Legislative Assembly and the Legislative Council (other than sections 27, 28 and 28A);
 - (b) The administration of and practices associated with the electoral laws described at (a).
- (3) All matters that relate to (2)(a) and (b) above in respect of the 22 March 2003 State election, shall stand referred to the Committee for any inquiry the Committee may wish to make. The Committee shall report on the outcome of any such inquiry within 12 months of the date of this resolution being agreed to by both Houses.
- (4) That the Committee consist of seven members, as follows:
 - (a) three Members of the Legislative Assembly of whom:
 - (i) three must be Government members, and
 - (b) four Members of the Legislative Council of whom:
 - (i) one must be a Government member,
 - (ii) two must be an Opposition member, and
 - (iii) one must be a Cross-bench Member.
- (5) That the members be nominated in writing to the Clerk of the Legislative Assembly and the Clerk of the Legislative Council by the relevant party leaders and the cross-bench members respectively, within seven days of this resolution being agreed to by both Houses. In the absence of any agreement concerning Legislative Council representation on the committee the matter is to be determined by that House.
- (6) That notwithstanding anything contained in the Standing Orders of either House, at any meeting of the Committee, any four members of the Committee will constitute a quorum, provided that the Committee meets as a joint committee at all times.
- (7) That the Committee have leave to sit during the sittings or any adjournment of either or both Houses.
- (8) That the Committee have power:
 - (a) to send for and examine persons, papers, records and things,
 - (b) to adjourn from place to place,
 - (c) to make visits of inspection within the State of New South Wales and elsewhere in Australia, and
 - (d) to take evidence in accordance with the provisions of the *Parliamentary Evidence Act 1901*.
- (9) That the Committee have leave to report from time to time.

(10) (a) That if either House is not sitting when the Committee wishes to report, the Committee have leave to send any such report, minutes and evidence to the Clerk of each House.

(b) A report presented to the Clerk is:

- (i) on presentation, and for all purposes, deemed to have been laid before the House,
- (ii) to be printed by authority of the Clerk,
- (iii) for all purposes, deemed to be a document published by order or under the authority of the House, and
- (iv) to be recorded in the official proceedings of the House.

Terms of reference for the inquiry

(1) That the Joint Standing Committee on Electoral Matters inquire into and report on all aspects of the conduct of the 2003 NSW Election and related matters, including but not limited to:

- the role of the State Electoral Office;
- the consistency of procedures used, and rulings made, by District Returning Officers;
- postal voting, including an examination of inconsistencies between State and Federal postal voting legislation and procedures;
- the criteria used for the designation of pre-poll voting places; and
- procedures and provisions relating to the confirmation of enrolment.

(2) That in conducting its inquiry into the 2003 election the committee include for examination and report:

- (a) the problems associated with the finalisation of the counting of votes in the Legislative Council periodic election, and in particular-
 - the identification of the nature of the problems
 - ascertaining why the problems occurred
 - ascertaining why the problems were not identified earlier
 - ascertaining what can be done to ensure that such problems do not occur again
 - any other relevant matter in addressing these problems;
- (b) the changes to the Legislative Council voting system that applied for the first time at the 2003 periodic election, such as, group voting squares; and
- (c) the counting of preference votes, including random sampling.

NB: The Committee is precluded from inquiring into Part 2 of the *Parliamentary Electorates and Elections Act 1912* and sections 27, 28 and 28A of the *Constitution Act 1902* which concerns the distribution of electorates.

Chairman's Foreword

This report on the administration of the 2003 NSW election and related matters is the first by the Joint Standing Committee on Electoral Matters. The terms of reference for the inquiry were quite broad, which provided an opportunity for a range of issues on electoral administration, procedures and legislation to be considered.

Many of the issues that were raised throughout the inquiry were raised in various contexts. Accordingly, there are a number of themes that run across the report such as the lack of resources for the SEO, the need for improved training of staff involved in the electoral process and the need for legislative reform including the way that votes are counted and transferred to elect candidates to the Legislative Council.

The Council on the Cost and Quality of Government conducted a performance review of the SEO whilst the Committee was undertaking this inquiry. The review recommended that the SEO be given additional budgetary resources to improve services. The extra budgetary resources were realised in the 2005-06 Budget.

In addition, the Electoral Commissioner has made a submission to The Cabinet Office about potential amendments to the *Parliamentary Electorates and Elections Act 1912*. As such many of the issues that were raised in the inquiry are timely as the Committee's findings can be utilised by The Cabinet Office when it considers amendments to the Act.

Many concerns were raised about the service provided by the SEO during the 2003 election campaign including such issues as consistency in advice given by polling officials and staff of the SEO and difficulties with postal voting. The recommendations made by the Committee are primarily aimed at improving the service provided by the SEO.

The Committee has also made a number of recommendations in relation to the method used to count and transfer surplus votes for the Legislative Council. New South Wales currently uses the random selection method to transfer votes and is the only jurisdiction in Australia, and one of only two in the world, to still random sample votes rather than count all preferences. These provisions are entrenched in the *Constitution Act 1902* and can only be changed with the approval of the voters.

The Committee has recommended a referendum be conducted to remove the administrative detail in relation to the method for counting the votes from the *Constitution Act 1902*. If agreed to, the Committee is of the view that the random selection method should be abolished. To this end the Committee has recommended that the Government consider the matter when it reviews the electoral legislation.

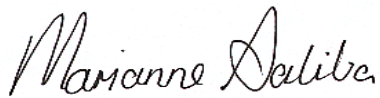
Another significant aspect of the Committee's inquiry related to a computer problem that was experienced by the SEO when the votes for the Legislative Council for the 2003 election were being counted. The Committee engaged BMM International to assist it in understanding the nature of the problem. It was found that the problems encountered during the counting process stemmed from a lack of appropriate risk management and that the SEO should have

Executive Summary

picked up the problems prior to polling day. The Committee thanks BMM for its assistance in preparing this report.

The Committee also thanks all organisations and individuals who made submissions to the inquiry and for those who appeared before the Committee at public hearings.

Finally, I would like to thank my Committee colleagues for their interest and effort and the Secretariat for their work throughout the inquiry.



Marianne Saliba MP
Chairman

Executive Summary

Introduction

The Joint Standing Committee on Electoral Matters was appointed in 2004 by both Houses to inquire into any aspect of the 2003 State election and the administration of electoral laws more generally.

In October 2004, the Committee resolved to conduct an inquiry into the administration of the 2003 State election and related matters. The conduct of elections in New South Wales is determined by the provisions in the *Constitution Act 1902* and the *Parliamentary Electorates and Elections Act 1912*. Under these provisions the campaign period for elections in New South Wales is three weeks from the issue of the writ to polling day, the shortest time frame for any election campaign period in Australia. In addition, the New South Wales Legislative Council election is the largest individual election in Australia in terms of the number of candidates and the counting effort.

The 2003 State election was held on 22 March 2003 and cost \$33 million. Approximately 92% of people enrolled to vote or 4 million voters cast votes at the election. A new method of voting for the Legislative Council applied for the first time at the 2003 election. This method enabled voters to preference groups when voting 'above-the-line'. This new method made previous software that had been used by the State Electoral Office to count the votes for the Legislative Council redundant and also meant that manual counts could not be done with any degree of confidence in the legislative time frame.

The role of the SEO

The State Electoral Office (SEO) provides administrative support to the Electoral Commissioner to enable the Commissioner to fulfil a range of statutory functions and duties. In relation to the role of the SEO, the Committee considered issues that relate to the overall work of the SEO, its capacity to fulfil its role and related issues.

Electoral Legislation:

Throughout the inquiry process many comments were made regarding the current legislation applying to elections in NSW, including the need for new electoral legislation that reflects the way elections are administered and conducted in the 21st Century. The *Parliamentary Electorates and Elections Act 1912* has been in place for almost 100 years. During this time it has not been comprehensively reviewed but has been amended substantially, which has resulted in a complex piece of legislation.

A number of deficiencies in the Act were identified, including the need for the SEO to be placed on a statutory footing. Under the Act as it currently stands no mention is made of the SEO. The Committee is of the view that consideration should be given to providing the SEO with statutory functions and powers as is the case with the SEO's counterparts in other Australian jurisdictions. The Act also creates complex relationships and lines of accountability for those officials involved in the election process.

The Electoral Commissioner has approached The Premier's Office and The Cabinet Office in relation to the need to review the Act. The Committee notes that this review is necessary and provides an opportunity to identify deficiencies in the Act and consider ways to ensure that

Executive Summary

the legislation reflects current practices and standards of accountability. The Committee has recommended that a discussion draft of the new legislation be released for public comment and that submissions on this draft be considered by the Committee.

The issue of the timing of the writ was also considered by the Committee. It was argued by a witness before the Committee that under the system of fixed terms of Parliament in New South Wales the writs for the election should be issued on the same day as the expiration of the Parliament to ensure that the maximum time period is available for the election campaign. The Committee is of the view that more detailed consideration needs to be given to this suggestion before any amendment is made to the *Parliamentary Electorates and Elections Act 1912*.

The Committee also heard arguments that a longer effective election period could be achieved by moving forward certain defined dates that are found in the *Parliamentary Electorates and Elections Act 1912* such as the close of nominations and the beginning of pre-poll, postal and mobile polling.

Resources of the State Electoral Office:

A recurring theme throughout the inquiry process was the need for the SEO to be better resourced. The Council on the Cost and Quality of Government conducted a performance review, which was completed while the Committee was still undertaking its inquiry. The Council concluded that the SEO lacked resources in a number of areas and recommended that the SEO be provided with additional funding to provide for more staff and increased training. The SEO received additional funding for employee related expenses in the 2005-06 NSW Budget. The amount allocated increased from approximately \$1.9 million in 2004-05 to just under \$3.5 million for 2005-06.

The Committee is hopeful that the additional budgetary resources will help to alleviate the concerns that have been raised about the SEO's lack of resources. The Committee also notes that the SEO is in the process of restructuring and that the new structure provides for the SEO to research and develop policy on electoral matters, and ensure that corporate and strategic planning is conducted, areas that were lacking under the former structure of the Office. However, the Committee considers that the staff of the SEO still require some experience in relation to how other electoral offices work and should be provided with opportunities to expose themselves to different procedures and ideas that could be utilised in New South Wales.

Input by political parties in the operations of the State Electoral Office:

An issue that was raised with the Committee as part of the inquiry was the need for political parties to be able to have input into the operations of the SEO. The Committee is of the view that it would be advantageous for the SEO to consult with the registered political parties, as major stakeholders, in relation to issues that affect the operations of the SEO and electoral issues that will impact on political parties.

Electoral Education:

The issue of electoral education was also raised in relation to the role of the SEO. The Committee heard that the SEO conducts less education than its counterparts in other Australian jurisdictions. The Committee considers that there is a need for the SEO to target

those groups in society that are disenfranchised due to a high level of informal vote or under-enrolment and is encouraged that under the new organisational structure for the SEO that there is a dedicated education and research officer who will be able to assist in this area.

The administration of elections

The administration of elections is the major function of the SEO. The Committee considered a number of issues related to this role including problems and difficulties that were experienced during the 2003 election campaign.

Improving the lines of accountability for officers involved in the election process:

The Committee notes that under the current provisions of the *Parliamentary Electorates and Elections Act 1912* the Governor appoints returning officers for each electoral district for the purposes of all elections. The Electoral Commissioner can recommend people for appointment but is unable to direct them in their work or dismiss them directly. Measures are taken in terms of training and providing support to returning officers during the election process. However, any guidelines issued to returning officers by the Electoral Commissioner have no standing under the Act and do not have to be complied with. This arrangement has resulted in a lack of accountability, which in turn has caused inconsistent decisions across polling places.

The Committee considers that the Electoral Commissioner needs to be empowered under the Act to be able to direct returning officers and that relevant manuals or guidelines issued to returning officers should be mandatory to follow under the Act. The Committee is also of the view that the Electoral Commissioner should have the power to not only appoint and direct returning officers but that the Commissioner should be able to dismiss them without the need for the Governor's intervention.

Consistency in advice provided by polling officials and staff of the State Electoral Office:

The issue of returning officers and staff of the SEO providing inconsistent advice to political parties and candidates, or applying procedures inconsistently was raised in many contexts throughout the inquiry. Whilst some of these inconsistencies may be overcome if the Electoral Commissioner is given the authority to direct returning officers, the amount of contradictory advice provided at the 2003 election points to the need to ensure that polling officials and staff of the SEO are provided with appropriate training.

The SEO conceded that the people appointed as returning officers are inadequately trained and often dealt with matters that arose during the election period without consulting the SEO for advice. The SEO also noted that the support structures in place for returning officers was insufficient. The Committee found that the SEO has recognised the need to ensure that returning officers are provided with an adequate support structure throughout the election process, and that a system of quality control is in place to ensure that returning officers are provided with accurate advice.

The Committee was also pleased that the SEO has acknowledged the need for more appropriate training programs to be in place to ensure that returning officers are equipped with the right knowledge to perform their role. The Committee notes that in preparation for the 2007 State election the SEO will concentrate on minimising risks at election time including providing more appropriate training of key election officials.

Executive Summary

The Committee also heard that many clerical errors were made by returning officers, and one political party considered that this careless and sloppy work could lead to perceptions that the polling officials were not completely impartial. The Committee is of the view that such clerical errors are inadvertent but that they highlight a lack of procedures to ensure that work is accurate and complete.

In addition to problems with returning officers, it was indicated to the Committee that the staff of the SEO often provided inconsistent advice to the political parties in relation to such processes as postal vote application forms and the registration of how-to-vote cards. It was argued that some of the problems probably stemmed from a lack of resources and poor communication across the agency. The Committee is of the view that communication needs to improve across the SEO and that the SEO requires a better structure that provides not only support for the staff but also ensures accountability. The Committee notes that a new structure for the SEO has been finalised which includes a dedicated client services area, which may assist in alleviating problems of inconsistent advice.

Problems were also identified in relation to the lack of consistent procedures used by data entry operators and supervisors involved in the counting of votes. The concerns raised indicated that there has been inadequate training for those involved in processing votes. The Committee is of the view that there needs to be adequate training for both data entry operators and supervisors involved in processing votes to ensure that they are following best practice and to improve accountability. The Committee also identified the need for the SEO to put in place appropriate risk management strategies in relation to the counting of votes.

Consistency of procedures across State and Federal elections:

A number of issues that were raised in the Committee's inquiry stemmed from the fact that there are different administrative requirements for Federal and State elections. The inconsistencies in the procedures and rules are a by-product of the different electoral laws and include: requirements regarding electoral material, such as the distribution and display of electoral material at polling places; the criteria to be a general registered postal voter; the criteria for declared institutions; and the places chosen to be polling places. The Committee is of the view that it would be beneficial for administrative procedures in place at State elections to be consistent with those that apply at Federal elections where appropriate. This would assist people working for political parties, candidates and the general public alike as it will help to avoid the confusion that currently exists.

Postal voting:

A number of problems associated with postal voting were raised throughout the inquiry. The Committee is particularly concerned about the difficulties that are faced by rural postal voters due to the short timeframe for elections in New South Wales, which has resulted in voters in remote areas of New South Wales not receiving ballot papers prior to election day or not being able to return ballot papers to the SEO within the specified time. The SEO have acknowledged the problems facing rural postal voters. However, there appears to be little proactive thinking by the SEO to ensure that rural postal voters in remote areas of the State can actually have a vote that counts. Rather, the SEO see that the problem is the mail service provided to rural New South Wales by Australia Post.

The Electoral Commissioner noted that encouraging more remote voters to become Registered General Postal Voters may assist in ensuring that the votes are included in the counting process. This is because if people are registered for each election as a postal voter they will be issued with ballot papers as soon as they can be. Whereas, if they apply for an application to be a postal voter for each election they must ensure that the application is received as soon as possible after the issue of the writ to give them every chance of being able to vote.

It was also put to the Committee that whilst the fixed term Parliaments are entrenched in the *Constitution Act 1902* that the election campaign period, and hence an increase in the time for postal votes to be received, could effectively be extended by amending certain dates that are specified in the *Parliamentary Electorates and Elections Act 1912*.

Problems were also raised regarding postal voting from overseas. The Committee concedes that if the SEO has difficulty in sending ballot papers to remote areas of rural New South Wales that there may be even more delays in sending postal voting material overseas. Whilst the SEO appear to be doing very little proactive work in relation to improving the situation for remote rural and overseas postal voters, the Electoral Commissioner did note in evidence that electronic voting may be a measure to assist such voters.

The Committee considers that e-voting does have advantages but it is not convinced that e-voting is secure enough to be an effective mechanism to assist rural and overseas voters. However, the Committee is of the view that the SEO should be proactively finding ways to ensure that remote voters who are located in rural New South Wales and overseas are not disenfranchised merely because of their location.

The *Parliamentary Electorates and Elections Act 1912* provides for people to register as general postal voters if they meet certain criteria such as being seriously ill or infirm. The Committee noted that the criteria for registration as a general registered postal voter in New South Wales is not as wide as that under the *Commonwealth Electoral Act 1918* (Cmth.), which provides three additional criteria under which voters can register for postal votes. It was conceded by the SEO that this inconsistency in the legislation is problematic in that it may result in some people not voting at a NSW election as they presume they are registered for both jurisdictions. The Committee has recommended that the criteria to be a general registered postal voter in New South Wales be brought into line with the Commonwealth legislation.

Consideration was also given to the involvement of political parties in the postal voting process. Under current arrangements political parties are able to print postal vote application forms at their own cost and send these out to the public at large with a political message on the reverse side of the forms. These application forms include a return paid envelope to the party who then forward the forms onto the appropriate returning officer.

Concerns were raised that this process results in double-handling of postal vote applications, which causes unnecessary delays, and often confuses some electors. The Committee concedes that this may be the case but is not convinced that the SEO has been managing applications for postal votes in an efficient and effective manner. The Committee notes that the SEO has been given a significant increase in resources but considers until such time that

Executive Summary

it has been proven these additional resources have resulted in an improved service that the parties are actually assisting enfranchisement.

Under current arrangements applications for postal votes are made to the appropriate district returning officer and ballot papers for postal voters are distributed by the returning officers. However, the Electoral Commissioner advised the Committee that there is a need for a centralised postal voting operation centre for the Sydney, Newcastle and Wollongong areas. The Committee sees merit in having a centralised postal voting operations centre for the heavily populated areas of the State that can not only process and distribute all postal voting material but can also provide advice to voters on postal voting issues throughout the election campaign.

How-to-vote material:

How-to-vote material was another area that was considered by the Committee. Consideration was given to the registration process for campaign material. Under current arrangements, all how-to-vote material that candidates and parties wish to hand out to voters are required to be registered with the Electoral Commissioner. It was put to the Committee that the current arrangements should be changed to allow such material to be registered with the District Returning Officers. This idea received some support amongst political parties as it would allow for an appeal mechanism whereby the Electoral Commissioner could override the decision of the Returning Officer. Under the current arrangements there is no provision for appeal.

The Electoral Commissioner was however opposed to the idea arguing that it could lead to inconsistency and wrong decisions. The Committee accepts the position of the Electoral Commissioner that responsibility for the registration of election material should remain within his responsibility as it will ensure consistent advice. The Committee also recognises that as the decision on whether material is allowed to be registered will remain with the Commissioner whether in the first instance or on appeal there is no reason to change the current arrangements.

On a related note, any electoral material that is registered with the Electoral Commissioner is not made public and cannot be viewed by the candidates or registered parties. A number of political parties noted that they were supportive of moves to make registered material publicly available. The Committee considers that transparency in election processes is vital to public confidence in the electoral system and democracy. As such, it is of the view that all campaign material that is registered with the Electoral Commissioner in accordance with the *Parliamentary Electorates and Elections Act 1912* should be available to the public on request on election day.

The Committee also heard that the tight timeframes that apply to elections in New South Wales provide only 8 days for political parties to register how-to-vote material with the Electoral Commissioner and to arrange for printing. It was put to the Committee that the requirement for the registration of material should be abolished and replaced with a general prohibition on the distribution of election material that is false and misleading or is likely to be, as is the case in Federal elections.

The Committee considered the current provisions of the *Parliamentary Electorates and Elections Act 1912* and noted that they provide for applications to be made after the issue of the writs and before the day of nomination for preliminary advice on whether material may be registered pending the inclusion of details as to the names of candidates and the allocation of preferences. Given this provision, parties can arguably prepare for the printing of election material in accordance with this preliminary advice. Accordingly, the Committee considers that the current arrangements for the registration of election material are appropriate and that the tight timeframe is not a significant factor to warrant changes to the legislation.

The Committee also considered cross party support on how-to-vote cards. Under current arrangements campaign material cannot be distributed if they recommend votes for both Houses unless candidates are from the same party. It was put to the Committee that the current ban discriminates against some candidates. There were differing opinions expressed by political parties about whether cross party how-to-vote cards should be allowed. The Committee considers the current arrangements to be adequate and do not need to be changed.

Issues were also raised about the display and distribution of election material at polling places as part of the inquiry. Concerns were expressed about the inconsistency of rules regarding the display of campaign material at polling places across State and Federal elections and across polling booths. It was argued that these inconsistencies cause confusion for those involved in the election process.

The Committee is concerned that the same rules are not being applied across polling places in NSW elections. It is of the view that this situation reflects the need for the SEO to ensure that polling officials are provided with adequate training and guidelines to ensure that rules are applied consistently across polling places. In addition, the Committee considers the rules in relation to the displaying of campaign material at polling places for NSW elections should be consistent with those that apply for Federal elections.

Another area where consistency should be applied across State and Federal elections is in relation to the canvassing of votes at polling booths. There is currently a prohibition at Federal elections on canvassing for votes within 6 metres of a polling place but this is not the case for State elections in New South Wales. The Committee is of the view that consistency in this area will prevent confusion for those distributing campaign material. The Committee notes that if such a prohibition is to be applied consistently across polling places that a detailed definition of what is deemed to be the polling place is required.

Concerns were also expressed about the distribution of material that is unregistered at polling places on election day. The Committee is aware of the difficulties with ensuring that only registered material is being distributed and considers that deputy returning officers, who are in charge at polling booths should be empowered to confiscate any unregistered material that is being handed out. This will require that all registered material be provided to deputy returning officers located at the booths.

Information for scrutineers:

Concerns were raised with the Committee about the way scrutineers were informed about the counting of votes and the lack of guidelines issued to scrutineers. The Committee was

concerned that the seemingly casual way that scrutineers were informed about the counting of votes and the lack of guidelines available to scrutineers could lead to confusion and possibly disputes between scrutineers and supervisors responsible for overseeing the count.

The Committee notes that scrutineers play an important accountability function in Australia's political system by ensuring that electoral officials conduct the counting of votes correctly. The Committee sees that there is merit in providing scrutineers with more detailed information on the election procedures to ensure that they are well informed as to what they should expect and what they are allowed to do. The Committee is of the view that the SEO has a responsibility to issue scrutineers with guidelines to ensure that they are properly informed prior to polling day.

Information about and designation of polling booths:

A number of matters about the designation of and information provided about polling places were raised as part of the inquiry. Concerns were expressed about the multitude of polling places within close proximity. The Electoral Commissioner conceded that there were some flaws in the way in which the SEO designated polling places due to under-resourcing and the SEO's lack of effective planning.

Representatives of the SEO also noted that some organisations such as churches and some public schools were pushing the SEO away from using their buildings due to public liability issues. It was noted that there are no powers of demand in NSW for the SEO to require the use of facilities for elections as there are in other jurisdictions.

The Committee understands the concerns that organisations have in relation to public liability issues but is of the view that those premises that are funded by the consolidated fund should be at the SEO's disposal for election purposes. The Committee has recommended that the SEO be given statutory powers to require the use of such facilities. It has also recommended that the Government investigate the possibility of removing any liability for organisations whose premises are used for election purposes.

Concerns were also expressed about the lack of clear signage at polling places near the boundary of electorates that service more than one electorate. The Committee concedes that there will be a handful of polling places where electorates overlap and there are no viable alternative premises that can be used to avoid this duplication. The Committee, does however see the need to ensure that in those polling places that service more than one electorate that clear signs are in place in order to alleviate any confusion that voters may experience.

It was also argued by a number of political parties that the SEO should advise candidates of the number of entrances and/or gates that will be open at each polling booth on election day in the same way that the Australian Electoral Commission (AEC) advise candidates of this information for Federal elections. The Electoral Commissioner has identified the selection of polling places as a specific project for upcoming elections. The Committee is of the view that by having a dedicated project officer assigned to the selection of polling places that more detailed information such as the number of entrances that will be open on election day should be provided to candidates as part of this project. The Committee is also of the view that the same premises should be used for State and Federal elections where possible and that the SEO should consult with the AEC regarding the selection of polling places.

Declaration voting:

The Committee considered concerns that were raised in relation to pre-polling facilities including the demand for additional facilities in the City of Sydney and the need to ensure that pre-polling places are easy to find and have disabled access. The Committee has recommended that the SEO investigate the possibility of providing a large pre-poll centre located in the Sydney CBD for State elections similar to that provided by the AEC for Federal elections. The Committee has also recommended that the SEO establish a set of criteria to ensure that all pre-poll voting facilities are located in premises that are easy to find and where possible provide disabled access.

It was put to the Committee that declaration voting, both pre-poll and postal, is unnecessarily complex and should be simplified. The Electoral Commissioner noted that declaration voting could be simplified so that a voter only needs to declare that they cannot attend a polling place between the hours of 8am and 6pm. The Committee supports the idea that declaration voting should be simplified and has recommended that the *Parliamentary Electorates and Elections Act 1912* be amended to simplify the procedures for declaration voting in line with the Commissioner's comments. The Committee has also recommended that the SEO investigate procedures for declaration voting in other jurisdictions with a view to streamlining the procedures in New South Wales.

Overseas voting arrangements:

The Committee received a submission that commented on the way voting was conducted in overseas polling places. It was noted that difficulties were faced in relation to: the rules that were in place in relation to the identification required to vote; the fact no provision was made for a voter to cast a secret ballot; and that the ballot paper for the Legislative Assembly was hand-written rather than a printed paper. The SEO advised the Committee that whilst it endeavours to ensure that overseas voting offices have printed ballot papers that logistical difficulties, including the short time frame for NSW elections, have meant that not all overseas locations have been provided with printed ballot papers. The Committee understands the difficulties faced by the SEO in relation to ensuring that overseas voting is conducted in an acceptable manner.

In addition, as overseas voting is arranged through the Department of Foreign Affairs and Trade, the Committee understands the difficulty of having a Federal agency largely responsible for the administration of voting in overseas polling offices. The Committee has recommended that the SEO improve its manuals and procedures that are issued to overseas voting offices so that they are clear and easy to implement.

Reporting on elections by the State Electoral Office:

The Committee considered the reporting powers and requirements of the Electoral Commissioner as part of the inquiry including the need for the Electoral Commissioner to report to Parliament on the administration of elections and whether there was a need for the position holder to be able to report to Parliament on electoral matters more generally.

The Committee considers that the Electoral Commissioner should be required to report to Parliament on the administration of general elections as soon as practicable after the return of the writs for an election on the administration of that election. The Committee notes that such reports should provide similar information to that provided to the Commonwealth

Executive Summary

Parliament by the AEC following general elections. The Committee however does not consider that the Electoral Commissioner requires additional reporting powers to report to Parliament on electoral matters more generally.

The way in which the SEO reports the results of elections was also considered by the Committee. It was noted that most jurisdictions across Australia report two-candidate and two-party preferred counts by polling place but that the SEO does not report this information despite the fact that it is actually compiled.

The Committee notes that the SEO is advised of the preference results for the different polling booths by the deputy returning officers on election night and is of the view that the SEO should provide similar information to its counterparts in other Australian jurisdictions. The Committee has recommended that the SEO include in the statistical returns for a general election and by-elections the two-candidate and two-party preferred results by booth.

Nomination process:

Consideration was given to the myriad of administrative procedures that must be followed under the current arrangements for the nomination of candidates. Concerns were expressed by a number of political parties that the current procedures were in need of reform and could be streamlined so that the process was made less complex. The Electoral Commissioner advised the Committee that the SEO will be considering ways to improve the nomination process.

The Committee considers that the administrative procedures for the nomination of candidates could be improved and encourages the SEO to consider procedures that are employed in other jurisdictions when it considers ways to improve the current nomination process. The Committee notes that procedures for nominations should be efficient and not place unnecessary burdens on candidates and registered parties.

Voting by people with disabilities:

A number of concerns were raised as part of the inquiry in relation to the role of the SEO in ensuring that people with disabilities are not disenfranchised due to their disabilities. It was put to the Committee that the SEO had failed to act on specific access needs. The Committee considers that it is important for all citizens who are eligible to vote to be able to cast their vote in an acceptable manner.

The Electoral Commissioner advised the Committee that the SEO was in the process of engaging a consultant to direct a project to develop a disability action plan that would commence during the 2005-06 financial year. The Committee is pleased that the SEO has realised the need to ensure that people with disabilities have a right to vote in an equal manner to people without disabilities and looks forward to seeing strategies in place to assist disabled people to vote in an acceptable manner at future State elections.

Security of ballot papers:

The security of ballot papers has been an issue that has concerned members of Parliament for a number of years. Issues surrounding the security of ballot papers were also raised as part of the Committee's inquiry, particularly in relation to the way ballot papers have been stored at central counting locations. The Committee considers that the security of ballot

papers is an area where the SEO need to ensure that adequate plans and procedures are in place in relation to not only how they are stored at the counting centre but also how they are stored at the polling booths and then transported to the central counting centre. The Committee has recommended that the SEO ensure that adequate security assessments are conducted in relation to the storing and transporting of ballot papers.

Political advertising:

A number of comments regarding political advertising were made throughout the inquiry process. The Democrats argued that truth in political advertising legislation should be introduced and The Greens expressed concerns that section 151A of the *Parliamentary Electorates and Elections Act 1912*, which deals with the publishing of false information, is too narrow and suggested that an independent body could be established to adjudicate on the truth of advertisements or statements made during the election period.

The Electoral Commissioner argued that the SEO has no role in judging the truth or otherwise of political advertising and noted that it was up to the people to judge the truth of political advertising that is published/broadcast throughout the election period. The Electoral Commissioner also commented that a solution to the problem of false or misleading advertising would be that if a person is convicted of defaming a candidate that such a conviction could provide a means to take the matter to the Court of Disputed Returns, which could then decide on the whether there has been a fair election.

The Committee is conscious of the fact that the election process is a fierce contest and that there are times when false or misleading statements will be made about candidates. However, given that the election period in New South Wales is so short it sees difficulties in the suggestion that an independent body be established to adjudicate on the matter. The Committee agrees with the Electoral Commissioner that the SEO should not be involved in deciding on the truth or otherwise of political advertising and that it is up to the people to judge the truth or untruth of any political advertising throughout the election period.

Voter identification:

The issue of voter identification, both for purposes of enrolling and for voting was raised during the Committee's inquiry. The Electoral Commissioner noted that the Federal Government had proposed legislation to provide for identification to be produced when enrolling to vote and that the State would need to consider the issue if they wished to preserve the joint enrolment process.

The Committee considers that the issue of voter ID is something that the Government will need to consider in relation to the joint-roll arrangements that are currently in place. If it becomes a requirement for voters to produce ID on enrolment under the *Commonwealth Electoral Act 1918* it will be necessary for complementary legislation to be passed in New South Wales to ensure that the joint enrolment processes remain.

Concerns were also expressed about voter fraud and it was argued by the Australian Democrats that voters should be required to produce ID when voting. The Committee is hesitant to recommend that voters be required to produce ID and considers that such a requirement could slow down the voting process and result in less people voting. The

Committee does not consider voter fraud to be a significant problem and does not see the need for voters to produce ID to vote.

Confirmation of enrolment and voter registration:

Under the Joint Roll Agreement the AEC is responsible for the preparation, alteration and revision of rolls of electors in New South Wales. The SEO advised the Committee that to be eligible to vote electors must submit their enrolment details prior to the Close of the Roll noting that an acknowledgement card confirming enrolment is issued by the AEC to those electors confirming their enrolment. The SEO also advised that it has been the practice of former Electoral Commissioners to request the AEC to withhold acknowledgement cards for those voters who were late in submitting a claim for enrolment.

The SEO did however note that in other jurisdictions interim acknowledgement cards are issued to those voters who have submitted claims for enrolment after the Close of the roll. It was argued that this practice alerts electors as to their enrolment status at the current election. The SEO indicated that it will have discussions with the AEC before the next general election on implementing such an approach.

The Committee considers that it would be beneficial for voters who have submitted a claim for enrolment that is received after the close of the roll to be notified as to their enrolment status for the current election and voting options. The Committee encourages the SEO to consult with the AEC about implementing a system of interim acknowledgement cards for such electors.

Problems with the counting of votes for the Legislative Council at the 2003 election

Following the 2003 election concerns were raised about the way the SEO had managed the count of the votes for the Legislative Council. These concerns were specifically in relation to alleged computer problems that caused the count to be delayed a number of times. The SEO provided the Committee with information on the problem as part of its submission and also in evidence, indicating that the cause of the problems was the development of the software. The Committee engaged BMM International, to assist in its understanding of the nature of the problems.

Software was first used by the SEO to assist with the counting of votes for the Legislative Council elections in 1988. This software was supplemented by manual processes, which performed the transfer of value calculations and distributed preferences. Following the 1995 election the SEO purchased the software used by the AEC for Senate elections. This software was customised so that it could be used for elections for the Legislative Council and provided for the entering of preferences from the ballot papers, the distribution of preferences and the production of the election result. This application was used successfully at the 1999 election.

Significant amendments were introduced to the *Parliamentary Electorates and Elections Act 1912* in 2000 including the provision for voters to allocate preferences for groups 'above the line' when voting for the Legislative Council. These amendments introduced a complexity that rendered the vote counting software developed for the 1999 election redundant. A decision was made to modify the software rather than develop a new system.

Nature of the problems:

Two major problems were identified with the software used for the 2003 Legislative Council election. The first problem related to the index tables, which were poorly optimised and prevented the pre-count process from proceeding. The SEO advised that the problem stemmed from a combination of indexes being disorganised due to the large data entry effort and/or incompatibility between the database and its configuration with the computer server used to support the count. The SEO noted that the index was re-created to overcome the problems that were encountered.

The second problem that was identified with the software was in relation to the data entry of non-preference data. A zero preference was entered in the field that related to the square closest to the markings to represent 'out of square' markings. The entry of zero values in the preference field caused problems with the count process by misrepresenting the value of some votes and causing a number of formal votes to prematurely exhaust. The problem was resolved by a new program that identified and removed the zero preference entries.

The Committee was advised by BMM that the steps taken to investigate and fix the problem adhered to standard industry practice. Precautions were taken to protect the integrity of the data by testing on a copy of the database. The fixes were then applied to the preference database.

Why the problems were not identified earlier:

A significant issue that contributed to the late detection of the problems was a lack of SEO resources and effective management of the project. The project manager responsible for managing the redevelopment project had no previous exposure to the system or to the legislation. Instead, significant responsibility was given to one person within the SEO who had a working knowledge of the software and legislation. This officer also had responsibility for management of the office's commercial and local government elections division. Due to the lack of resources, this person was not relieved from his day-to-day responsibilities.

Another reason that the problems were detected late was because a full scale data entry test was not undertaken. The pre-count and count processes were fully tested end to end. However, a decision was made not to attempt to replicate the operation environment because to do so would be time consuming and expensive (approx. \$1 million). Instead the SEO tested the modified software by running the 1999 election data. However, there was a significant increase in the volume of data that needed to be entered for the 2003 election. BMM considered that in addition to running the 1999 election data that the SEO should also have considered simulating the production of 1.5 million ballot paper data and running it through the pre-count and count processes.

In relation to the entry of non-preference data, the system testing and acceptance testing processes did not pick up the fact that the treatment of preferences marked outside squares on the ballot paper had been overlooked. The IT consultants were of the understanding that numeric preferences included zero and allowed for zero preferences when developing the data entry screen. It was not realised at the time that allowing the data entry of zeros would impact on the pre-counting and vote counting processes.

Zero preferences were not used in the counting of votes and the entry of zero values in the preference field caused problems with the count process by misrepresenting the value of some votes and causing a number of formal votes to prematurely exhaust. The decision to use the 1999 election data as the operational test meant that this situation was not discovered because there was no ability to enter zeros in the previous version of the software.

Ensuring the problems do not occur again:

BMM advised the Committee that the problems that occurred with the count for the Legislative Council election in 2003 will not occur again as a process to re-create the index tables has been included into the pre-counting process. This will ensure that the index tables will be correctly optimised for the pre-counting and counting processes. In addition, the ballot paper data entry program has been modified to remove the ability to enter a single zero or multiple zeros.

The problems encountered in the 2003 election were non-trivial and should have been picked up prior to the 2003 election. However, the methods adopted by the IT personnel to identify and fix the problems followed standard industry practice. On the balance of probabilities, the Committee has no reason to believe that the problems had any impact on the data nor the outcome of the election.

The Committee is however of the view that the SEO must manage future IT projects that are integral to the election process with more prudence ensuring that all risks are identified and minimised. BMM has recommended that a software development life cycle methodology be adopted by the SEO for future IT projects. The software development life cycle is the overall process of developing information systems through a multi step process from investigation of initial requirements through analysis, design, implementation and maintenance.

The Committee is of the view that the SEO should consider adopting the steps identified by BMM in relation to the software development life cycle for future IT projects. This will ensure that adequate testing of the system occurs before it is used. The Committee considers that this is particularly important given that BMM have identified that acceptance testing and integration testing are the two areas where the SEO need to improve in future IT projects.

The voting system for the Legislative Council

Part 2 of the Sixth Schedule of the *Constitution Act 1902* sets out the procedure for counting the votes for the Legislative Council. Members are elected under a proportional representation – single transferable vote (PR-STV) system. Candidates for the Legislative Council need to obtain a quota, which is approximately 4.5% of the total formal votes cast, in order to be elected. Any votes a candidate receives above this quota are known as surplus votes and are transferred to the remaining candidates in the order of preference indicated. The ballot papers transferred are selected at random. New South Wales is the only state in Australia to random sample votes rather than count all preferences. Random sampling is used as a method of simplification to make the count for the Legislative Council easier and arose due to the fact that the system originally required a manual count.

As part of the inquiry the Committee considered the current method of counting and transferring surplus votes for the Legislative Council, the difficulties associated with having the provisions entrenched in the *Constitution Act 1902* and whether an alternative method would be more appropriate.

Constitutional provisions:

The provisions in the *Constitution Act 1902* that set out how the votes for the Legislative Council are to be counted and transferred were enacted in 1978 in conjunction with amendments to provide for members of the Legislative Council to be elected directly by the people. As these amendments affected the procedures for the election to the Legislative Council they needed to be approved by the electors at a referendum prior to enactment due to the provisions of section 7A of the *Constitution Act 1902*.

The reason a referendum was required was because the legislation changed the way that the members of the Legislative Council were elected. However, as the method used for the counting and transferring of votes was included in the same legislation and consequently enacted in the Sixth Schedule, the method for the counting of votes cannot be changed without the approval of the electors at a referendum.

It was put to the Committee that there is no need for the administrative detail regarding the procedure used for the counting and transferring of votes to be included in the Sixth Schedule and thereby entrenched. Rather, this detail should be transferred to the *Parliamentary Electorates and Elections Act 1912* leaving only the general description. This is the case in other jurisdictions that elect members under a PR-STV system including the Australian Senate.

The fact that the method of counting and transferring votes for the Legislative Council are entrenched and cannot be amended without a referendum has resulted in a number of difficulties. First it has meant the continued use of the random sampling method even though computer technology has made it relatively simple to distribute all preferences. Second, problems in relation to dealing with the votes of a candidate that dies. This is problematic as there are no provisions in the Sixth Schedule which state how the count is to proceed in such situations and as it is entrenched there is no way it can be added without a referendum.

The Committee considers that it is important for certain aspects of the electoral system to be entrenched under the *Constitution Act 1902* to ensure that the Parliament cannot simply change the way members are elected without the consent of the majority of electors. However, the Committee is of the view that the purpose of entrenching the provisions in relation to electing members to the Legislative Council set out in the Sixth Schedule were for the most part in order to ensure that members of the Legislative Council are to be elected directly by the people.

The Committee sees no reason why the detailed administrative procedures in relation to how votes are counted and transferred should remain entrenched and has recommended that a referendum be held to transfer those sections of the Sixth Schedule to the *Parliamentary Electorates and Elections Act 1912*. If approved this would then mean that provisions in relation to the death of a candidate and the transferring of votes could be amended by the normal legislative process.

In addition to complying with the requirement for a referendum, any bill that is proposed to be submitted to the electors at a referendum proposing changes to the procedures for the election to the Legislative Council must be passed by both Houses of Parliament at least two

months prior to the referendum in accordance with section 7A(3) of the *Constitution Act 1902*. Legislation also needs to be passed by the Parliament providing for the holding of a referendum.

The counting of votes for the Legislative Council:

New South Wales was the first State to adopt a single transferable vote (STV) system for an upper house election in Australia. The system adopted was that used by the Senate at the time. Under the system only those votes that an elected candidate has received over and above the quota required are considered surplus and transferred. These surplus votes are transferred at their full value and based solely on the next preference marked on the ballot paper. Those ballot papers that are actually transferred are randomly selected.

It was put to the Committee that random sampling of ballot papers is an outdated and unnecessarily flawed process and that with the use of computers all votes should be counted and the preferences distributed. There are concerns that the method introduces an element of chance into the system by randomly choosing those ballot papers that are to be transferred and that it discriminates against those voters whose ballot papers are transferred to an elected candidate ahead of his or her attaining a quota. A number of political parties indicated to the Committee that they would be supportive of moves to abolish the random sampling method.

The Committee is of the view that if a referendum is agreed to removing the entrenched provisions in the *Constitution Act 1902* relating to the method for the counting and transferring of votes for the Legislative Council that random sampling should be abandoned as the method for the counting of votes. The Committee considers that random sampling is outdated and that whilst the statistical error of an unrepresentative sample is low that it would be preferable if a full distribution of the preferences from all the votes is conducted rather than a random selection of the last bundle of votes a candidate receives.

The Committee considered a number of alternate methods for counting and transferring votes for the Legislative Council. The Inclusive Gregory method is used for elections to the Senate and the upper Houses of Victoria, South Australia and Western Australia. This method takes into consideration all the votes of a candidate elected with an excess of the quota when transferring surplus votes, rather than just the last bundle credited to the elected candidate as is currently the case in New South Wales. Whilst the method guarantees that all surplus votes are considered the method has a technical fault whereby the value of votes can increase during the distribution of preferences. This anomaly brings with it the danger of electing the wrong candidate.

A number of election observers that gave evidence to the Committee considered that if the Committee is of the mind to recommend the adoption of the same system used by the Senate for the counting and transferring of votes for the Legislative Council that it should be modified to ensure that the value of votes does not increase. This system is known as the Weighted Inclusive Gregory method.

The Committee considers that there is a need to adopt a new method for the counting and transferring of votes for the Legislative Council in New South Wales. The Committee is of the

view that at a minimum the system used to count the votes for the Senate should be adopted. However, it is also of the view that consideration should be given to adopting the Weighted Inclusive Gregory method. The Committee considers that if a new system for the counting and transferring of votes for the Legislative Council is adopted that it would be appropriate to adopt a system that does not have anomalies, no matter how small such anomalies may be.

The view was expressed to the Committee that if a referendum is agreed to in relation to removing the entrenched provisions of Part 2 of the Sixth Schedule of the *Constitution Act 1902* that a new method of counting and transferring the votes should apply at the 2007 NSW election. However, there are a number of practical difficulties with this due to the entrenched provisions requiring the Electoral Commissioner, as the Council returning officer, to take certain steps at the close of the poll and then take other sequential steps.

The Electoral Commissioner and representatives of the SEO also indicated there would be a number of difficulties with the idea. It was noted that the SEO would require two vote counting systems ready to be used, depending on the referendum result and that the costs involved in the development of new software or amendment of existing software could be quite significant. It was also argued that changing the system for counting the votes could require changes in the operational procedures for those officers involved in the election process, which could affect the training of these officers.

Whilst the Committee considers that random sampling should be abolished there are a number of logistical problems in relation to the suggestion that a new method for counting and transferring the votes should apply at the 2007 election. The Committee is of the view that changing the method for counting and transferring votes for the Legislative Council needs to be a two-step process. First, a referendum needs to be approved by the electors to transfer the provisions regarding the current method for counting and transferring votes from the *Constitution Act 1902* to the *Parliamentary Electorates and Elections Act 1912*. Second, if the referendum is approved that a new method of counting and transferring the votes be incorporated into the *Parliamentary Electorates and Elections Act 1912*.

Changes to the electoral system that applied at the 2003 NSW election:

Following the March 1999 General Election there was widespread criticism of the large ballot paper for the Legislative Council and the allocation of preferences under group voting. Consequently, amendments were made to the *Parliamentary Electorates and Elections Act 1912* regarding the registration of political parties and group voting for the Legislative Council.

The amendments made in relation to the registration of political parties were introduced to tighten the minimum requirements to ensure that only genuine political parties with some level of community support may contest elections. The Committee found that these new requirements have been welcomed by political parties.

The amendments introduced in relation to group voting squares provide for electors to preference votes 'above the line'. The new provisions eliminated the ability of parties to garner preference deals. Political parties are still able to hand out how-to-vote cards indicating how they would like voter's preferences to be given but the choice is left to the

Executive Summary

voter. The Committee received differing views from a number of minor political parties about whether the new system of voting for the Legislative Council was better than what was previously in place.

The Committee considers that the changes introduced following the 1999 election have ensured that only genuine parties are able to contest elections for the Legislative Council. It also considers that by allowing voters to choose preferences 'above the line' and the abolishment of lodged Upper House tickets that voters now have more control of who their vote actually elects.

Voting procedures:

A number of issues were raised during the inquiry about voting procedures including group voting squares and optional preferential voting. A number of submissions argued that above the line voting through group voting squares should be abolished. The majority of the Committee does not see that there is any reason to change the current system of voting above the line, noting that the method was introduced to alleviate the problem of informal votes. In addition, the Committee considers that the method of voting above the line is popular with voters with only 1.84% of voters choosing to vote below the line at the 2003 election.

The Committee received a number of comments on optional preferential voting. The NSW Branch of the Proportional Representation Society expressed concerns about the requirement for 15 votes to be recorded for those voters who choose to vote below the line for the Legislative Council elections arguing that voters should be able to vote for as less or as many candidates as they wish. The Committee appreciates the concerns raised but has not considered the matter in any detail and is reluctant to make any conclusions on its merits or otherwise.

List of Recommendations

- RECOMMENDATION 1: That the Parliamentary Electorates and Elections Act 1912 be thoroughly reviewed by the Government. That a discussion draft of the new legislation be released for public comment and that submissions on this draft be considered by this Committee. 5
- RECOMMENDATION 2: That the SEO consider providing staff with the opportunity to work in other electoral offices around Australia as part of training procedures. 11
- RECOMMENDATION 3: That the SEO consult on a regular basis with registered political parties regarding the operations of the SEO and in relation to electoral issues that will impact on political parties. 12
- RECOMMENDATION 4: That the *Parliamentary Electorates and Elections Act 1912* be amended to empower the Electoral Commissioner to appoint, direct and dismiss returning officers. 18
- RECOMMENDATION 5: That the *Parliamentary Electorates and Elections Act 1912* be amended to provide that compliance with relevant manuals or guidelines issued by the Electoral Commissioner to returning officers or polling officials be mandatory under the Act. 18
- RECOMMENDATION 6: That the SEO ensure that all staff involved with the counting of votes for the Legislative Council at the central counting centre are adequately trained so that consistent procedures are used. 27
- RECOMMENDATION 7: That the SEO ensure that appropriate risk management strategies are in place in relation to verifying data entered as part of the counting process at the central counting centre. 27
- RECOMMENDATION 8: That the SEO consider informing remote voters about the advantages of becoming a Registered General Postal Voter and also consider abolishing booths in remote areas with less than 100 voters; develop criteria for a minimum number of voters to make a booth viable; and encourage voters who utilised these booths to become Registered General Postal Voters. 31
- RECOMMENDATION 9: The SEO take a pro-active approach to ensure that voters in rural New South Wales and overseas are not disenfranchised because of their location. 33
- RECOMMENDATION 10: The *Parliamentary Electorates and Elections Act 1912* be amended to make the criteria to be registered as a general postal voter consistent with the criteria under the *Commonwealth Electoral Act 1918* (Cmth). 35
- RECOMMENDATION 11: That section 114AA of the Parliamentary Electorates and Elections Act 1912 be amended to provide for applications for postal votes to be made to the SEO and that ballot papers for districts in the Sydney, Newcastle and Wollongong areas be distributed from a central processing unit rather than by District Returning Officers. 40
- RECOMMENDATION 12: That all election material, such as how-to-vote cards, that are registered with the Electoral Commissioner be available to the public upon request on election day. 43
- RECOMMENDATION 13: That deputy returning officers, who are in charge at polling booths, be provided with copies of registered campaign material. 47

Recommendations

- RECOMMENDATION 14: That deputy returning officers be empowered to confiscate any unregistered material that is being distributed at polling places47
- RECOMMENDATION 15: That a detailed definition of what is deemed to be a polling place is included in the NSW electoral legislation or regulations.48
- RECOMMENDATION 16: That the canvassing of votes within 6 metres of a polling place be prohibited at State elections as is the case at Federal elections48
- RECOMMENDATION 17: That the SEO issue guidelines to scrutineers about the election process and advise them about what they are allowed to do during the counting process.....51
- RECOMMENDATION 18: That the SEO be given statutory powers to require the use of premises that are wholly or partially funded from the consolidated fund for the purposes of the State election. This does not include the premises of organisations that receive funds from government sources to provide services.53
- RECOMMENDATION 19: That the Government investigate the possibility of removing any liability for organisations whose premises are used for election purposes53
- RECOMMENDATION 20: That the SEO ensure that there is clear signage at polling places that service more than one electorate to alleviate voters' confusion.....53
- RECOMMENDATION 21: That information on the number of entrances and/or gates that will be open on Election Day be provided to candidates.55
- RECOMMENDATION 22: That where possible, the SEO should use the same premises for State elections as are used by the AEC for Federal elections.55
- RECOMMENDATION 23: That the SEO provide a large pre-polling centre in the Sydney CBD for State elections similar to that provided by the AEC for Federal elections57
- RECOMMENDATION 24: That the SEO establish a set of criteria to ensure that all pre-poll voting facilities are located in premises that are easy to find and where possible provide disabled access.57
- RECOMMENDATION 25: That the *Parliamentary Electorates and Elections Act 1912* be amended to simplify the procedures for declaration voting so that a voter only needs to declare that they cannot attend a polling place on election day between 8am and 6pm.58
- RECOMMENDATION 26: That the SEO investigate procedures employed in other jurisdictions for declaration votes with a view to streamlining the procedures in New South Wales.58
- RECOMMENDATION 27: That the SEO improve its manuals and procedures for overseas voting offices so that they are clear and easily implemented.59
- RECOMMENDATION 28: That the *Parliamentary Electorates and Elections Act 1912* be amended to require the Electoral Commissioner to report to the Parliament as soon as practicable after the return of the writs for an election on the administration of that election.61
- RECOMMENDATION 29: That the SEO include in the statistical returns for a general election and by-elections the two-candidate and two-party preferred results by booth.64

- RECOMMENDATION 30: That the SEO review the current administrative procedures for the nomination of candidates with a view to implementing procedures that are efficient and do not place unnecessary burdens on candidates and registered parties. 66
- RECOMMENDATION 31: That the SEO ensure that adequate security assessments are conducted in relation to the storing and transporting of ballot papers..... 69
- RECOMMENDATION 32: That the SEO consider adopting the software development lifecycle methodology as outlined in paragraph 4.56..... 89
- RECOMMENDATION 33: That a referendum be held with a view to transferring Part 2 of the Sixth Schedule of the *Constitution Act 1902* to the *Parliamentary Electorates and Elections Act 1912*. 95
- RECOMMENDATION 34: That the issue of abolishing random sampling as the method for the counting and transferring of votes for the Legislative Council be considered by the government as part of the review of the *Parliamentary Electorates and Elections Act 1912*. 100

Chapter One - Introduction

- 1.1 The conduct of General Elections in New South Wales is determined by provisions in the *Constitution Act 1902* and the *Parliamentary Electorates and Elections Act 1912*. Subject to the *Parliamentary Electorates and Elections Act 1912*, the Electoral Commissioner is responsible for administering those legislative provisions that relate to the registration of enrolment of electors, the preparation of lists and rolls of electors, and the conduct of elections.¹
- 1.2 New South Wales has the shortest time frame for an election campaign period of any Australian jurisdiction being three weeks from the issue of the writ to polling day. This short timeframe means that the State Electoral Office [SEO] need to be adequately prepared to undertake all the necessary steps that must be done in those three weeks such as receiving nominations, processing applications for postal voting and distributing ballot papers. In addition, the New South Wales Legislative Council election is the largest individual election in Australia in terms of the number of candidates and the counting effort.
- 1.3 The 2003 State election was held on 22 March 2003. The following table provides a snapshot of the election:

Enrolment:	4,272,104	
Votes cast/enrolment:	92.02% (LC)	91.87% (LA)
Informal Vote:	5.3% (LC)	2.6% (LA)
Cost of election (LA + LC)	\$33M	
Election Funding:	\$6,806,106 (LC)	\$3,108,767 (LA)
Number of candidates:	284 (LC)	660 (LA)
Number of postal votes:	161,102 (LC)	163,108 (LA)
Number of polling places:	2,768	

* Source: State Electoral Office, Submission to the Inquiry, p. 4.

- 1.4 The 2003 election was the first election where a new system of voting for the Legislative Council was in place – optional preferential voting ‘above-the-line’. This method of voting allows voters to allocate preferences for groups ‘above-the-line’. Approximately 20% of voters chose to use the new method of voting.
- 1.5 In addition, this new system introduced a complexity that made previous software redundant and also meant that manual counts could not be done within the legislative time frame with any degree of confidence.²

BACKGROUND TO THE INQUIRY

- 1.6 Following the 2003 New South Wales State election concerns were raised about the way the SEO had managed the count of the votes for the Legislative Council. These concerns were specifically in relation to alleged computer problems that caused the count of the vote to be delayed a number of times.

¹ Section 21A(2) of the *Parliamentary Electorates and Elections Act 1912*

² State Electoral Office, Submission to the Inquiry, p. 25.

Introduction

- 1.7 In 2004 the Committee was appointed by both Houses to inquire into any aspect of the 2003 State election and the administration of electoral laws more generally.

THE INQUIRY PROCESS

- 1.8 Pursuant to the Committee's terms of reference as adopted by both Houses of Parliament, the Committee resolved at its meeting on 28 October 2004 to conduct an inquiry into the administration of the 2003 State election and related matters. (See page vii).

Call for submissions

- 1.9 The Committee advertised for submissions in December 2004. It also invited the SEO, all Members of the New South Wales Parliament and all registered political parties in New South Wales to make a submission to the inquiry. The Committee received 14 submissions. A list of submissions and other documents received is at Appendix One.
- 1.10 The submissions received highlighted a range of issues including:
- a need for more resources for the SEO and an increased emphasis on training of staff;
 - the need for consistency of procedures in relation to elections, both across polling places and districts and across State and Federal elections;
 - the need for an overhaul of the *Parliamentary Electorates and Elections Act 1912*, particularly in relation to improving the lines of accountability between the Electoral Commissioner, the SEO and polling officials;
 - problems with the computer system used to count the votes for the Legislative Council; and
 - a need to change the method used to count and transfer surplus votes for the Legislative Council.

Public hearings

- 1.11 The Committee held public hearings on 23 May 2005 and on 6 June 2005. These hearings provided the Committee with an opportunity to discuss the issues that were raised in the submissions and other matters of relevance to the Committee's inquiry. A list of witnesses is noted at Appendix Two.

Study tour

- 1.12 As part of the inquiry process the Committee sent a delegation to jurisdictions that have a proportional representation – single transferable vote (PR-STV) system, which is the system currently used to elect members to the Legislative Council. The delegation met with members of Parliament, parliamentary officials and electoral officials in both Ireland and Malta to discuss how the PR-STV system operated in the respective countries. The delegation also visited officials of the United Nations and academics to discuss broader issues of election systems and in particular to benchmark practices in relation to the administration of election in New South Wales. A list of the meetings that were held is included at Appendix Three.

Chapter Two - The role of the State Electoral Office

INTRODUCTION

2.1 The SEO provides administrative support to the Electoral Commissioner to enable the Commissioner to fulfil a range of statutory functions and duties. The submission from the SEO notes that the Electoral Commissioner's primary functions under the *Parliamentary Electorates and Elections Act 1912* include:

- Enrolment of electors and preparation of rolls for elections;
- Conduct elections for the Legislative Council;
- Make recommendations to the Governor for the appointment of persons as returning officers;
- Appoint polling places and declared institutions for special voting;
- Register eligible political parties;
- Register How-to-Vote cards; and
- Issue penalty notices for failure to vote.³

2.2 The administration of elections is one of the major roles of the SEO and consideration is given to those issues integral to the SEO's administration of elections in the next Chapter. This Chapter considers those issues that relate to the overall work of the SEO, its capacity to fulfil its role and related issues.

ELECTORAL LEGISLATION

2.3 Throughout the inquiry a number of comments were made in relation to the current legislation applying to elections in New South Wales including the need for new electoral legislation, which reflects the way elections are administered and conducted in the 21st Century, and the timing of the issue of the writs. The major issue that was considered by the Committee in relation to electoral legislation was regarding the counting of votes for the Legislative Council. Detailed consideration is given to the legislation that applies to voting system for the Legislative Council in Chapter Five.

The need for new electoral legislation?

2.4 The *Parliamentary Electorates and Elections Act 1912* has been in place for over 90 years. During this time it has not been comprehensively reviewed but has been amended substantially. This has resulted in a complex piece of legislation. The submission from the SEO referred to a number of deficiencies in the Act. First, it noted that the Act does not establish the SEO as a statutory body with prescribed functions and powers:

Section 21A(10) of the *Parliamentary Electorates and Elections Act 1912 (the Act)* provides for administrative support to be provided to the Electoral Commissioner to enable statutory functions and duties to be exercised. Such support is provided by the SEO. The Electoral Commissioner's statutory functions and duties are set out in section 21A(2) of the Act. In the context of the conduct of a General election, the SEO has no legislative role other than as the administrative unit that provides support to the

³ State Electoral Office, Submission to the Inquiry, p. 5.

Electoral Commissioner. It is noted that at the Commonwealth and in some States and Territories there is an Electoral Commission which is established by the relevant electoral legislation. The Electoral Commission has in its own right certain functions and powers over and above those of the Electoral Commissioner. This is not the case in New South Wales.⁴

- 2.5 The Committee is of the view that consideration should be given to whether the SEO should have statutory functions and powers. Under the Act as it currently stands no mention is made of the SEO. In contrast other jurisdictions have provided the SEO's counterparts with statutory functions and powers. For example, Part 2 of the *Electoral Act 2002* (Vic.) establishes the Victorian Electoral Commission and provides for the employment of its staff. It sets out the functions and powers of the Commission and includes a number of statutory requirements that the Commission must comply with. These requirements include reporting to each House of Parliament within 12 months of the conduct of each election on the administration of that election, and a mandatory requirement to publish an election manual for the purposes of the Act, which includes directions issued by the Commission. The Commonwealth, Queensland and both Territories have similar legislation.
- 2.6 Second, the SEO referred to the complex relationships that the Act has established for those involved in the election process. The submission from the SEO noted:

When the Act was first proclaimed in 1912, there was no provision for an Electoral Commissioner. The position was provided for in 1928. At that time the relationships between the Governor, the Electoral Commissioner, returning officers and polling officials appeared not to have been reviewed. Over time, as further amendments were made to the Act some new processes were considered to be more appropriate for the Electoral Commissioner, ie registration of how-to-vote cards and registration of eligible political parties.

New South Wales now has a complex piece of electoral legislation that has relationships between the Governor, Electoral Commissioner, returning officers and polling officials with blurred lines of accountability. This situation has come about as a result of many amendments made to the Act and no restructuring of the relationships.⁵

- 2.7 The issue of improving the lines of accountability for those officers involved in the election process is given detailed consideration later in the report (see paragraphs 3.2 – 3.13).
- 2.8 The Committee raised the issue of the need for new electoral legislation with the Electoral Commissioner. He implied that there is a need to review the electoral legislation in New South Wales as it is outdated:

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?

⁴ Ibid, p. 5.

⁵ Ibid, p. 7.

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.⁶

- 2.9 The *Parliamentary Electorates and Elections Act 1912* has been in place for almost a century and has been amended on numerous occasions. The Committee considers that these ad hoc amendments have resulted in a complex piece of legislation that is outdated in need of review to ensure that it reflects how elections are administered and conducted in the 21st Century. A number of other jurisdictions have overhauled their electoral legislation in recent years. For example, in Victoria a new Electoral Act was enacted in 2002 following concerns that Victoria's electoral legislation had a number of deficiencies including being poorly organised and not providing for modern electoral management practices.⁷
- 2.10 It should be noted that the Electoral Commissioner has approached the Government in relation to the need for a review of the Act and advised on potential amendments. The Committee considers a review necessary to provide an opportunity to identify deficiencies in the Act and to update the legislation to reflect current practices and accountabilities.

RECOMMENDATION 1: That the *Parliamentary Electorates and Elections Act 1912* be thoroughly reviewed by the Government. That a discussion draft of the new legislation be released for public comment and that submissions on this draft be considered by this Committee.

The timing of the issue of the writ

- 2.11 Under the *Constitution Act 1902* the period of a Parliament is prescribed as four years. Section 24(1) states:
- A Legislative Assembly shall, unless sooner dissolved under section 24B, expire on the Friday before the first Saturday in March in the fourth calendar year after the calendar year in which the return of the writs for choosing that Assembly occurred.⁸
- 2.12 After the Parliament has expired or is dissolved, the writs are issued in accordance with sections 68 and 74A of the *Parliamentary Electorates and Elections Act 1912*. These provisions declare that the writs for the Assembly general election and Council periodic election "shall be issued within four clear days after the publication in the Gazette of the proclamation dissolving the Assembly, or after the Assembly has been allowed to expire by effluxion of time.....".
- 2.13 The timing of the issue of the writs was raised by Antony Green in his submission. He argued that under a system of fixed term Parliaments that it would be more appropriate for the *Parliamentary Electorates and Elections Act 1912* to provide for the writs to be issued on the same day as the expiration of the Parliament (i.e. the

⁶ Transcript of evidence, Monday 6 June 2005, pp. 55 – 56.

⁷ See Victoria Legislative Assembly, Parliamentary Debates, 21 March 2002 for the Attorney-General's second reading speech on the *Electoral Act 2002*.

⁸ Provision is also made for situations where the Legislative Assembly is dissolved prior to its expiration. See section 24B of the *Constitution Act 1902* (NSW).

Friday before the first Saturday in March) to ensure that the maximum time period is available for the election campaign. He commented:

When fixed term parliaments were introduced ahead of the 1995 election, a campaign period of just three weeks was adopted. This is the shortest time period of any jurisdiction in Australia. Every other state has a campaign period that allows three weeks between the close of nominations and polling day. New South Wales has three weeks as the maximum period of the campaign from issue of writ to polling day.

This problem is made worse when section 68 of the Parliamentary Electorates and Elections Act specifies up to four days for the issue of the writ after the dissolution. In both 1995 and 1999, this full period was utilised, making the campaign only 19 days, giving the Electoral Office the bare minimum period to conduct the election.

In 1999, this minimum period almost caused a melt-down for the Electoral Office. The massive size of the Legislative Council ballot paper caused problems with printing and distribution that came close to delaying the start of pre-poll voting and the issue of postal ballot papers.

In 2003, the government issued the writ the same day as the Parliament was dissolved. This was a surprise to most observers, and also I understand, the Electoral Office.

In a system of fixed parliamentary terms, I see no reason why the Parliamentary Electorates and Elections Act should not specify that the writ should be issued on the same day as the signing of the dissolution. It seems ridiculous in a system of fixed term parliaments to have the situation where the Electoral Office does not know on what day it can issue the call for nominations.⁹

2.14 Given the complexities involved with this issue the Committee asked Mr Green to elaborate on it when he appeared before the Committee:

The Hon. DON 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. DON 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?

⁹ Antony Green, Submission to the Inquiry, pp. 4 – 5.

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. DON 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. DON 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. DON 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 slightly longer they can start dealing with the postal vote applications which are coming in.¹⁰

- 2.15 The Committee is of the view that whilst there is merit in Mr Green's suggestion that more detailed consideration needs to be given to it before any amendment is made to the *Parliamentary Electorates and Elections Act 1912*. Under current arrangements there is room for discretion as to when the writs should be issued. The Committee is not convinced that there is a need for this to be changed. The Committee also note that the SEO has been provided with a significant increase in resources and that this may alleviate many of the problems that have occurred in the administration of past elections.
- 2.16 On a related note, Antony Green advised the Committee that whilst it is not possible to change the time of the election period as it is entrenched in the *Constitution Act 1902* and can only be changed by a referendum, that "a longer effective period" can

¹⁰ Transcript of evidence, Monday 6 June 2005, pp. 17 – 18.

be achieved by moving forward certain defined dates that are found in the *Parliamentary Electorates and Elections Act 1912*. He comments in his submission:

Under the fixed term amendments, it is not possible to lengthen the period of the campaign without a referendum. However, a longer effective period can be obtained by bringing forward all the defined dates in the *Parliamentary Electorates and Elections Act*, such as the close of nominations and the beginning of pre-poll, postal and mobile polling.¹¹

- 2.17 The Committee sees the benefits that could be achieved by bringing forward certain dates particularly in relation to providing a longer period for postal and pre-poll voting. However, in order to achieve this longer period the close of nominations must be brought forward. Under the *Parliamentary Electorates and Elections Act 1912* the date for the close of nominations is to be specified in the writ and is customarily the Thursday after the issue of the writ. This means that there is already less than a week for nominations to be received and making this period even shorter may not be welcomed by parties or candidates. For instance, when the matter of the nomination period was raised with The Greens, the Party noted that it would prefer a longer nomination period:

The Hon. DON HARWIN: Do you have any comments on the length of what is sometimes called the formal election campaign in New South Wales? Despite the fact we have a fixed term, the writs are issued effectively in the last three weeks before election day and nominations do not close until the Thursday after the closing of the writs, leaving a very short time to polling day. Do you have a view on that?

Mr ASH: I do, and if I had thought about it a bit more I might have included it in my submission. It is a very short nomination period, it is true. It is rushed, particularly when parties are running candidates in every seat. I favour a longer nomination period. I think the nomination period for federal elections is close to two weeks, and that is more reasonable.¹²

- 2.18 The Committee understands the concerns that parties have in relation to the short nomination period that already exists under the current arrangements. However, it considers that under fixed term arrangements that parties and candidates know well in advance of the issue of the writ when nominations will need to be in and preparations for nominations such as completing nomination forms could be made in readiness for the issue of the writ.

RESOURCES OF THE STATE ELECTORAL OFFICE

- 2.19 A recurring theme throughout the inquiry was the need for the SEO to be better resourced. A number of political parties indicated a need for improved resources. The Greens commented:

The state electoral office does a good job considering its resources, but in our view it is clearly understaffed and the government needs to increase the allocation of budgetary resources to the SEO.¹³

¹¹ Antony Green, Submission to the Inquiry, p. 5.

¹² Transcript of evidence, Monday 23 May 2005, p. 10.

¹³ The Greens, Submission to the Inquiry, p. 5.

- 2.20 The Shooters' Party also indicated that it considered the SEO to be under-resourced noting that the difficulties the Party faced in relation to nomination procedures and registration of how-to-vote material may be overcome if the SEO had more resources:

Mr BROWN: The only opening statement I care to make is that I really do not have anything to add to our formal submission, except to say that, in reviewing the other submissions, several of the submissions made the point that they felt that the State Electoral Office was under-resourced. Given the two points that the Shooters Party made in evidence, we would support that concern and would perhaps add that as a suggested solution to both of our submission points.¹⁴

- 2.21 In addition to the political parties a number of election 'observers' also commented on the SEO's lack of resources. Antony Green commented in his submission that the SEO is under-resourced in not only the number of staff but also in relation to the skill level and experience of staff. He noted:

Despite having to conduct complex elections for two houses of Parliament, the New South Wales State Electoral Office (SEO) struggles along with a staffing level less than that for the equivalent body in South Australia, a state with only a quarter of the population.

...

I have covered elections in every state and territory in Australia, and from my observation, the NSW Electoral Office is the worst resourced in the country. Yet this is an Electoral Office that must run the country's largest state elections while saddled with the country's shortest campaign period.

...

One of the consequences of this under-resourcing is the lack of crucial skills amongst the staff of the SEO. My observation is that the staff of the SEO lack appropriate computer skills and have not had adequate opportunity to observe and work on elections conducted elsewhere in Australia. Staff of the NSW SEO have tended to know their own rules and regulations backward, but lacked adequate outside experience of alternative procedures and methods.

...

The New South Wales Electoral Office needs to be adequately funded to employ appropriately skilled staff, and also to take advantage of training opportunities available with other electoral administrations. Its funding also needs to be secure enough that the office can provide independent advice to government on problems with electoral administration in New South Wales.¹⁵

- 2.22 Mr Green also raised the issue of the under-resourcing of the SEO, lack of staff with the right skills and its failure to be more 'outward looking' when he appeared before the Committee:

Mr GREEN: 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.

¹⁴ Transcript of evidence, Monday 23 May 2005, p. 20.

¹⁵ Antony Green, Submission to the Inquiry, p. 2.

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 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.¹⁶

- 2.23 The Proportional Representation Society [PRS] were also of the view that the SEO is under-resourced, particularly in the area of skilled staffed and argued that a review of the resources of the SEO needs to be conducted:

...it is important that the Electoral Commissioner has sufficient time prior to the election to effectively prepare ballot papers and organise the significant resources required for many aspects of the election.

In addition, it appears that improvement in the computing capacity of the Electoral Commissioners staff is necessary.

It is suggested that a detailed review of the resources and capacity of the Electoral Commissioner is necessary and that comments by the Electoral Commissioner to meet requirements of the Government and the expectations of the general public should be considered.¹⁷

- 2.24 A performance review of the SEO was commissioned by the Budget Committee of Cabinet in August 2004. It was conducted by the Council on the Cost and Quality of Government.¹⁸ The review concluded:

SEO has a small head office which lacks the capacity to effectively plan work, manage risks and deliver its statutory functions. Some of the resources currently deployed in election years could be shifted to enhance head office core operations throughout the four year election cycle.

SEO needs to strengthen capacities in strategic planning, policy development, project management and analysis of state and local government elections.¹⁹

- 2.25 The Council recommended that the SEO be provided with additional funding for additional staff and increased training.²⁰ This was endorsed by the Government and the State Electoral Office received additional funding in the 2005-2006 NSW Budget that was handed down on 24 May 2005. The Budget for employee related expenses, which would include employing new staff and providing training for all staff of the

¹⁶ Transcript of evidence, Monday 6 June 2005, p. 8.

¹⁷ Proportional Representation Society of Australia (NSW Branch), Submission to the Inquiry, p. 5.

¹⁸ Council on the Cost and Quality of Government, *Performance Review of the State Electoral Office*, May 2005, p. 1.

¹⁹ Ibid, p. 3.

²⁰ Ibid, p. 6.

SEO, has been increased from approximately \$1.9 million in 2004-05 to just under \$3.5 million for 2005-06.²¹

- 2.26 The Committee is hopeful that the additional budgetary resources that have been provided to the SEO for additional staff and training will help to alleviate the concerns that have been raised regarding the SEO's lack of resources. The SEO is currently in the process of restructuring the organisation. This new structure provides the SEO with a new capacity to conduct research and develop policy on electoral matters. It also ensures that there is more accountability across the SEO. A copy of the old and new organisational structure for the SEO is found at Appendix Four.
- 2.27 In relation to training, the Committee is of the view that there is merit in Mr Green's suggestion that staff of the SEO should spend some time in electoral offices in other jurisdictions to gain experience and knowledge of how other electoral offices work. This will provide opportunities for staff to be exposed to different procedures and ideas that they will then be able to bring back and possibly utilise in New South Wales.

RECOMMENDATION 2: That the SEO consider providing staff with the opportunity to work in other electoral offices around Australia as part of training procedures.

INPUT BY POLITICAL PARTIES IN THE OPERATIONS OF THE SEO

- 2.28 An issue that was raised with the Committee as part of the inquiry was the need for political parties, as major stakeholders in the electoral process, to be able to have an input into the operations of the SEO. The Nationals implied in its submission that the Party would like to be consulted on operational matters of the SEO commenting:

...Despite being a key stakeholder, we rarely hear from the SEO and we are not asked for input on operational matters.²²

- 2.29 The Committee questioned the Nationals about what sort of input it would like to have. The Nationals stated that the Party would like to be consulted and kept up to date with happenings at the SEO noting that it had been asked to comment on the draft corporate plan of the SEO, which was encouraging:

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

²¹ NSW Treasury Budget Papers 2005 - 2006, *Budget Paper No. 3 – Volume 1: Budget Estimates*, p. 2 – 76 ff.

²² The Nationals, Submission to the Inquiry, p. 3.

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.²³

- 2.30 The Electoral Commissioner has indicated that he would consult registered political parties in relation to a number of other matters including the designation of polling places and in relation to the development of a suitable disability action plan for the SEO.
- 2.31 The Committee is of the view that it would be advantageous for the SEO to consult with the registered political parties, as major stakeholders, in relation to issues that affect the operations of the SEO and electoral matters in general.

RECOMMENDATION 3: That the SEO consult on a regular basis with registered political parties regarding the operations of the SEO and in relation to electoral issues that will impact on political parties.

ELECTORAL EDUCATION

- 2.32 The issue of electoral education was raised as part of the inquiry process. Antony Green noted that the electoral education conducted by the SEO was less than that conducted by electoral offices in other Australian jurisdictions. He said that more could be done in educating people on how the voting system works in New South Wales:

Mr GREEN: ...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...

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.

²³ Transcript of evidence, Monday 6 June 2005, p. 6.

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 by-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. 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.²⁴

- 2.33 The Democrats expressed the view that more education should have been conducted by the SEO in relation to the new voting system that was used for the 2003 election, where voters could preference groups 'above the line' when voting for the Legislative Council:

Voters appear to have a widespread belief that if they do not vote for either of the two major parties, that it is a wasted vote. This belief heavily undermines the virtues of the preferential voting system. The Australian Democrats would like to see more materials dedicated to explaining the preferential voting system as part of the SEO's public awareness expenditure.

The effect of the major parties 'How to Vote' campaigns, as well as the tradition of the preferences being allocated by a ticket, in the Federal elections meant that the voters were not expecting to have to fill in preferences horizontally above the line. The effect of this ignorance was worsened by the major parties encouraging the voters to continue to 'Just Vote 1'. Given the large number of 'How to Vote' cards and booth workers giving messages to the public to continue to do this, the minimal SEO voter education was swamped....²⁵

- 2.34 Antony Green also indicated the he was of the view that the SEO should have educated the voters more about the new system that was used for the 2003 election. He noted:

Mr GREEN: ...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

²⁴ Transcript of evidence, Monday 6 June 2005, pp. 10 – 11.

²⁵ The Australian Democrats, Submission to the Inquiry, pp. 2 – 3.

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.²⁶

- 2.35 The question of electoral education was raised with the Electoral Commissioner when he appeared before the Committee to give evidence. He noted that there was a role for the SEO to identify those groups in the community that appeared to have difficulties in understanding the system of voting and therefore had a high percentage of informal votes or high levels on non-enrolment. The Electoral Commissioner commented:

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.²⁷

- 2.36 The issue of electoral education was raised in informal discussions with the Electoral Assistance Division of the United Nations. The United Nations expressed the view that there is a role in democratic societies for both partisan and non-partisan political education.
- 2.37 The Committee notes that there is a need for the SEO to target those groups in society that are disenfranchised as reflected in the level of informal votes and under-enrolment. It is encouraged that under the new organisational structure for the SEO that there is a dedicated education and research officer that will be able to assist in this area.

²⁶ Transcript of evidence, Monday 6 June 2005, p. 24.

²⁷ Transcript of evidence, Monday 6 June 2005, p. 57.

Chapter Three - The administration of elections

INTRODUCTION

- 3.1 This chapter considers issues that were raised throughout the inquiry that relate to the way the SEO administers elections including problems and difficulties that political parties encountered throughout the 2003 election campaign period. The Committee has attempted to identify key areas where the SEO need to improve standards and has suggested ways in which this can be achieved.

IMPROVING THE LINES OF ACCOUNTABILITY FOR OFFICERS INVOLVED IN THE ELECTION PROCESS

- 3.2 Section 75 of the *Parliamentary Electorates and Elections Act 1912* provides for the Governor to appoint returning officers for each electoral district for the purposes of all elections. The Governor appoints these officers upon the recommendation of the Electoral Commissioner. Section 75 also provides that the Governor may terminate any appointment on the recommendation of the Electoral Commissioner.
- 3.3 Whilst the Electoral Commissioner may be able to recommend an appointment or termination of a returning officer, concerns were expressed to the Committee that under current arrangements the position holder is unable to direct them. The submission from the SEO argued that the arrangements are outdated:

Whilst the legislation provides that the Electoral Commissioner will have a considerable responsibility for aspects of a General election, the Electoral Commissioner does not appoint the returning officers who are the key officers responsible for the conduct of each of the ninety-three Legislative Assembly District elections. Returning Officers are appointed by the Governor on the recommendation of the Electoral Commissioner and once appointed, the Electoral Commissioner has no power to direct them in the course of their duties. The Electoral Commissioner can at best issue a best practice manual or offer “advice” to returning officers in those areas where they have statutory responsibilities.

In a modern management structure this arrangement may be considered unusual, however, it reflects administrative arrangements that pre dated the position of Electoral Commissioner (1928) and, were appropriate in the Nineteenth Century when communications were less advanced and therefore returning officers needed to have considerable powers and independence to make the election arrangements work. The Act has not been thoroughly reviewed since 1928 to ensure that the duties and responsibilities and accountabilities of the Electoral Commissioner, returning officers and polling officials are appropriate.²⁸

- 3.4 The submission from the SEO stated that, whilst the Electoral Commissioner is unable to direct returning officers, measures are taken in terms of training and providing support to returning officers during the election process. However, it was noted that any guidelines issued in relation to providing advice to returning officers have no standing under the legislation:

...the Electoral Commissioner has undertaken responsibility for the recruitment, training and support to returning officers during a general election. The Electoral Commissioner

²⁸ State Electoral Office, Submission to the Inquiry, pp. 5 – 6.

has produced an operational manual for returning officers and has provided necessary forms and manuals for candidates, scrutineers and registered political parties. It should be noted that any procedures, instructions and manuals issued by the Electoral Commissioner have no standing under the Act....at best such manuals and instructions can be seen as best practice.²⁹

- 3.5 Section 75 of the *Parliamentary Electorates and Elections Act 1912* (NSW) also provides for returning officers to appoint deputy returning officers. The SEO advised the Committee that neither the Electoral Commissioner nor the returning officer have the power to issue instructions to these deputy returning officers. The submission from the SEO noted that the arrangements are outdated and have resulted in a lack of accountability, which in turn has caused inconsistent decisions from polling place to polling place:

Polling places are staffed by deputy returning officers and poll clerks (polling officials). Polling officials are appointed by the appropriate returning officer. There is no power under the Act for the Electoral Commissioner to issue instructions to polling officials. Indeed there is no power under the Act for a returning officer to issue instructions to polling officials. It is understandable how this arrangement worked in the Nineteenth Century as a deputy returning officer has all the powers of a returning officer and takes instructions from the Act. Such arrangements may have worked satisfactorily 100 years ago where communications with the returning officer would have been by mail and consequently it was necessary for the local polling official to have powers to make decisions without reference to the returning officer. Now days with electronic communications such arrangements have considerable flaws. The main weakness is inconsistent decisions from polling place to polling place and District to District and blurred lines of accountability.³⁰

- 3.6 The Electoral Commissioner raised the problems of accountability when he appeared before the Committee. He reiterated the concerns that were expressed in the SEO's submission about the arrangements in place being outdated and that the inconsistency in decisions being made by district returning officers is a by-product of these arrangements:

...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 [Council on the Cost and Quality of Government] 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 legislation 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.

²⁹ Ibid, p. 6.

³⁰ Ibid.

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.³¹

- 3.7 The Electoral Commissioner went on to argue that the inconsistent advice stems from the poor accountability arrangements:

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.³²

- 3.8 The issue was also raised by Antony Green in his submission. He argued that returning officers were largely independent and that the ability of the Electoral Commissioner to direct returning officers was unclear:

Under the current Act, Divisional Returning Officers are appointed by the Governor, not the Electoral Commissioner. This raises the question of to whom Returning Officers are responsible. To an extent, Divisional Returning Officer's are independent of the Commissioner, and at times there have been questions as to how much power the Commissioner has to direct Returning Officers.³³

- 3.9 Mr Green was of the view that "clear lines and divisions of authority need to be established between the Electoral Commissioner, the Electoral Office and Returning Officers."³⁴
- 3.10 As noted by the Electoral Commissioner in evidence, the issue of the Electoral Commissioner's inability to direct returning officers was considered by the Council on the Cost and Quality of Government in a performance review of the SEO. The review noted that the Electoral Commissioner had inadequate control of returning officers and concluded that this could result in inconsistent advice being given by the returning officers.³⁵
- 3.11 It is noted in the report of the review that the Government has endorsed a number of recommendations including the need to amend the *Parliamentary Electorates and Elections Act 1912* to provide the Electoral Commissioner with "similar responsibilities, authority and accountability as his counterparts in other jurisdictions

³¹ Transcript of evidence, Monday 6 June 2005, pp. 40 – 41.

³² Ibid, p. 43.

³³ Antony Green, Submission to the Inquiry, p. 2.

³⁴ Ibid, p. 3.

³⁵ Council on the Cost and Quality of Government, *Op. Cit.*, p. 4.

(i.e. overall management of election process, direct supervision of Returning Officers and accountability for accuracy of election results).³⁶

3.12 The Committee is also of the view that the Electoral Commissioner needs to be empowered under the *Parliamentary Electorates and Elections Act 1912* to be able to direct returning officers. It is also of the view that any manuals or guidelines issued to returning officers should be mandatory to follow under the Act. The Committee questioned the Electoral Commissioner about what he thought would be appropriate sanctions for returning officers that did not comply with any mandatory guidelines:

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.³⁷

3.13 As noted, under the current arrangements returning officers can be dismissed by the Governor on the recommendation of the Electoral Commissioner. However, the Committee is of the view that the Electoral Commissioner should have the power to not only appoint and direct returning officers but that the Commissioner should be empowered to dismiss them without the need for the Governor's intervention.

RECOMMENDATION 4: That the *Parliamentary Electorates and Elections Act 1912* be amended to empower the Electoral Commissioner to appoint, direct and dismiss returning officers.

RECOMMENDATION 5: That the *Parliamentary Electorates and Elections Act 1912* be amended to provide that compliance with relevant manuals or guidelines issued by the Electoral Commissioner to returning officers or polling officials be mandatory under the Act.

CONSISTENCY IN ADVICE PROVIDED BY POLLING OFFICIALS AND STAFF OF THE STATE ELECTORAL OFFICE

The consistency of procedures used and rulings given by District Returning Officers

3.14 The issue of returning officers and staff of the SEO providing inconsistent advice to political parties and candidates or applying procedures inconsistently was raised in many contexts throughout the inquiry process. Whilst many of these inconsistencies may be overcome if the Electoral Commissioner is given the authority to direct returning officers and officials involved in the election process, the amount of contradictory advice provided at the 2003 election points to the need for more training of polling officials and staff of the SEO.

3.15 Returning officers are not permanent officials and are appointed on an intermittent basis. In relation to State elections 93 temporary district returning officers are appointed in addition to the employment of many casual staff to assist with the

³⁶ Ibid, p. 6

³⁷ Transcript of evidence, Monday 6 June 2003, p. 43.

administration of elections. The SEO note that a returning officer performs their role once every four years for approximately 8 weeks.³⁸

- 3.16 Concerns were expressed to the Committee by the Byron Bay Branch of the ALP that these 'temporary' returning officers may be inexperienced or are misinterpreting relevant legislation. This view stemmed from the rulings that returning officers have made in relation to declared institutions in the Byron Bay area. Declared institutions include nursing homes and hospitals and enable patients to vote prior to election day. The Branch noted that a particular nursing home was deemed to not be a declared institution as it was less than the required distance from the nearest polling place. The Branch queried this decision as it was felt that other nursing homes were possibly closer to polling places yet they were still declared institutions. The decision stood. However, it raised concerns about whether district returning officers were correctly interpreting the legislation.³⁹
- 3.17 The Shooters' Party also note that the Party received inconsistent advice from local returning officers and argue that this may be due to inadequate training of polling officials. The Chairman of the Shooters' Party commented:

The Hon. AMANDA FAZIO: With regard to the experience of your candidates at the local level, have they found there to be inconsistencies in the advice that they have been given by the local returning officers?

Mr BROWN: Yes, there have, particularly in terms of what I would call—I will not say "minor" rules, but rules such as the placement of material and issues like that. As I said, at the last election we had some of our material challenged because it was claimed it had not been authorised. It had been authorised. It did not take us long to sort it out internally and get the correct outcome, but the advice given to that particular polling booth group was different to advice given somewhere else. There does seem to be a bit of an inconsistency, perhaps a lack of updated edicts or training, whatever you want to call it. A common set of rules, so to speak. It did not affect our results, I do not think, but there was some inconsistency. Again, it depended upon the aggressiveness and cleverness of some of the workers from some of the major parties, perhaps.⁴⁰

- 3.18 It would appear that some of these concerns regarding returning officers are well founded with the SEO admitting that the people appointed as returning officers are inadequately trained and often dealt with matters that arose during the election period without consulting the SEO for advice. The submission from the SEO noted:

Previous training for new returning officers included a one day familiarisation training course which deals more with their role and an overview of their duties.

Approximately four months preceding a general election, returning officers attended a one and a half days training course to address those aspects relevant to the carrying out of their duties during the course of the election. The training focused more on procedural matters pertaining to the conduct of the election.

During the training returning officers were requested to refer any complex matters including policy or legislative issues that arise during the elections to the SEO for advice. Clearly, such limited training cannot equip returning officers with all the answers to the range of complex questions that may arise during a general election.

³⁸ State Electoral Office, Submission to the Inquiry, p. 8.

³⁹ Byron Bay Branch of the Australian Labor Party, Submission to the Inquiry.

⁴⁰ Transcript of evidence, Monday 23 May 2005, p. 22.

The returning officers were requested to seek advice from the SEO for two reasons. First, to ensure consistent advice and, second, to accommodate those matters which are required to be handled by the Electoral Commissioner and not returning officers (e.g. how-to-vote material). However, it was often the case that returning officers would deal with such matters without seeking advice from the SEO. In some instances returning officers provided incorrect information.⁴¹

3.19 In addition, the SEO conceded that the support structures in place for returning officers was not sufficient:

The SEO established five liaison officers to assist returning officers during the general election. The five liaison officers were recruited from retired returning officers. The duties of liaison officers were to be the SEO contact for all enquiries and to monitor returning officers' performance of their duties. However, as the election unfolded, it became clear that both the volume of enquiries and the complexity of some enquiries from returning officers were more than the liaison officers could manage. In hindsight it was evident that the liaison officers needed much more training than was provided.⁴²

3.20 The Committee was heartened by the fact that the SEO has recognised the need to ensure that returning officers are provided with an adequate support structure throughout the election process and that a system of quality control is in place to ensure that returning officers are provided with accurate advice. It is noted in the SEO's submission:

The SEO recognises that during a general election it needs to establish a support structure for returning officers. As well, it needs to establish a system of quality control to ensure that returning officers are provided with accurate and timely advice to assist them to respond to enquiries. Staff recruited as liaison officers need to have a higher level of understanding of electoral practices than returning officers in order to be able to provide accurate advice. They need to attend all training seminars to ensure they are familiar with the particular election arrangements.⁴³

3.21 The Committee was also pleased that the SEO has acknowledged the need for more appropriate training to be in place to ensure that returning officers are equipped with the right knowledge to perform their role. It is argued by the SEO that the increased scrutiny that the electoral process is now under has resulted in political parties and the media identifying inconsistencies in returning officers' decisions that may have gone undetected in the past. The level of training for returning officers needs to be improved to minimise the risk of inconsistent decision making and inaccurate advice being given by returning officers. The SEO commented:

...Returning officers need to have a thorough knowledge of the electoral process and be well trained in how to handle more complex enquiries. As well, returning officers require skills in the use of computer applications relating to the administration of elections. With the media taking an increased awareness in electoral administration, returning officers require training in handling media enquiries.

...the SEO is aware that returning officers need to be well trained in electoral procedures so that they can confidently undertake their duties. They need training in how to handle more complex enquiries and, in particular, understanding that they are not expected to be experts on all aspects of electoral administration. However, they are expected to seek

⁴¹ State Electoral Office, Submission to the Inquiry, p. 9

⁴² Ibid.

⁴³ Ibid.

advice from the SEO and as appropriate, provide accurate information. The SEO has identified that, in terms of its management of a general election, it needs to have in place a more appropriate training program for returning officers and a strong support structure during the election to minimise the risk of inconsistent decisions and inaccurate information being provided to stakeholders.⁴⁴

- 3.22 The Council on the Cost and Quality of Government identified the poor training and inadequate support for staff at polling places as a risk inherent in the operations of the SEO and that it could result in “non-compliance with all electoral requirements.”⁴⁵ The Council was of the view that action is required to minimise these risks and recommended that the SEO’s budget be adjusted to provide for amongst other things additional funding “to address identified risks by enhancing training and support for field staff.”⁴⁶
- 3.23 As previously noted the SEO received additional funding in the 2005-2006 NSW Budget some of which should be used for increased training.
- 3.24 The Committee is confident that the SEO has acknowledged the difficulties that have resulted from returning officers being inadequately trained to perform their role and have identified areas where increased training is required. The Committee notes that in preparation for the 2007 State election the SEO will place a greater emphasis on risk minimisation at election time, and more appropriate training of key election officials.⁴⁷
- 3.25 The Committee particularly encourages the Electoral Commissioner and the SEO to ensure that returning officers are provided with the appropriate training and support to perform their role for the 2007 State election.

Clerical errors made by returning officers

- 3.26 On a related note, The Nationals also referred to clerical errors made by returning officers in the lead up to the 2003 election, which may have impacted on the election. The Committee was informed that in the Murray-Darling electorate an advertisement was placed in the local paper advising voters of the candidates and polling places but had omitted two candidates, including the candidate for The Nationals. The Party argued in its submission that:

...This omission seriously misled the people who read this paper and as the advertisement was only included in the paper the day before the election there was no opportunity to print a corrected version of the ad in order to assure the voters were properly informed.⁴⁸

- 3.27 The issue was raised with the State Director of The Nationals when he appeared before the Committee where it was noted that careless and sloppy clerical errors could lead to perceptions that the polling officials were not completely non-partisan:

The Hon. JENNY 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

⁴⁴ Ibid, pp. 9 – 10.

⁴⁵ Council on the Cost and Quality of Government, *Op. Cit.*, p. 2.

⁴⁶ Ibid, p. 6.

⁴⁷ NSW Treasury Budget Papers 2005 – 2006, *Budget Paper No. 3 – Volume 1: Budget Estimates*, p. 2 – 12.

⁴⁸ The Nationals, Submission to the Inquiry, p. 2.

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.⁴⁹

- 3.28 The Committee is of the view that such clerical errors are inadvertent but that they highlight a lack of procedures to ensure that work is accurate and complete. Under sections 74, 81 and 126(2a) of the *Parliamentary Electorates and Elections Act 1912* it is the returning officers' responsibility to place advertisements in local newspapers prior to election day advising of candidates and polling places. However, the Electoral Commissioner has suggested to the Government that the Act should be amended so that these responsibilities lie centrally with the SEO. This would assist in ensuring consistency and hopefully accuracy in advertisements.
- 3.29 The Committee is confident that the SEO is an independent non-partisan agency that does not show favouritism to one party over any other. The Electoral Commissioner noted that there is a Code of Conduct for staff of the SEO and that all staff are made aware of the need for political neutrality.⁵⁰

Consistency in the advice provided by the staff of the SEO

- 3.30 In addition to concerns being raised about the inconsistencies in the procedures used and rulings given by returning officers, further concerns were raised about the inconsistency in the advice given by other staff of the SEO. For example, The Nationals raised concerns about being given inconsistent advice in relation to how-to-vote cards [HTVCs]:

At an SEO Briefing on December 5, 2002, our staff was advised that we would not be permitted to advertise another party on our HTV material and therefore the Liberal-National Coalition could not produce joint statewide HTVC's.

This advice was confirmed by our staff once the writs were issued they were again advised that the Liberal and National Parties would not be able to produce joint statewide HTVC's.

On Friday, March 7, 2003, the Electoral Commissioner contacted our office to notify us that due to complications with the ALP and Country Labor, the interpretation had changed and that the Liberal and National Parties would now be allowed to produce

⁴⁹ Transcript of evidence, Monday 6 June 2005, pp. 4 – 5.

⁵⁰ Ibid, p. 61.

combined statewide HTVC's. At this point our individual HTVC's had already been sent to our printer.

Given that in previous general elections, the Nationals and Liberals have been prohibited from producing joint statewide How to Votes, the sudden change in the SEO's advice in relation to the 2003 election due to these reported 'complications' as between the ALP and Country Labor, give rise to questions about previous rulings by the SEO affecting the non-Labor Parties in this regard. This sort of inconsistency can damage the SEO's reputation as to its political neutrality.⁵¹

- 3.31 When the State Director of The Nationals appeared before the Committee to give evidence he advised the Committee how this inconsistent advice was frustrating and impacted on The Nationals campaign strategy, which potentially gave another party "an edge" in the campaign for the 2003 election. Mr McFarlane commented:

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.⁵²

- 3.32 Another area where The Nationals noted that its workers had received inconsistent advice was in relation to postal vote application forms [PVAs]. The Nationals submission noted:

During the design process of the PVAs, our staff contacted the SEO to request a file that could be used in the Party's PVAs. An email was sent to us that contained the logo of the SEO in the corner of the form. Our staff again contacted the SEO to ensure the form had to be used in its entirety. The staff member in question was told that "if we wished" we could remove their logo and form number as long as everything else remained intact. While most Nationals' PVAs did not contain the SEO logo, some electorates did leave the logo in place. The week before the writs were issued, the SEO contacted our office to advise that we had breached regulations by including their logo on the form. When we pointed out what advice we had received previously, we were told that it was not possible that someone had provided such advice and that the matter "may be taken up at a later date."⁵³

- 3.33 The Nationals also noted that when advice was sought from the SEO that they would call twice to confirm the information received and that on most occasions differing advice was provided. In relation to campaign material it was commented that:

⁵¹ The Nationals, Submission to the Inquiry, pp. 1 – 2.

⁵² Transcript of evidence, Monday 6 June 2005, p. 1.

⁵³ The Nationals, New South Wales Secretariat, *Submission to the Inquiry*, p. 2.

On most occasions when advice was sought from the SEO, The Nationals' staff would be provided with conflicting information by different staff members at the SEO. Our staff developed a habit of ringing twice to confirm all advice received. On most occasions we would receive differing advice.

One such example was in regard to where we could lodge the registration of polling day material. We contacted the SEO to ask whether we could lodge everything in Sydney and were advised that everything had to be lodged with the local Returning Officers. We forwarded this advice onto our campaigns. One campaign subsequently tried to register their material with their local Returning Officer only to be told that it all had to be done in Sydney. We then contacted the SEO again to check this and were told we did in fact have to register all material in Sydney.⁵⁴

- 3.34 A number of parties suggested ways that this inconsistency in advice being provided by the SEO could be overcome. The ALP argued that staff of the SEO should specialise in particular areas to help eliminate inconsistent advice being given to parties and candidates:

The State Electoral Office should have specialist staff looking after every main process during the election campaign. So there should be one contact for Postal Votes, one contact for material registration, one contact for nomination procedures. This will eliminate the regular complaint candidates and registered parties make that they are not receiving consistent information.⁵⁵

- 3.35 The Nationals noted in evidence that the suggestion that specific people should be responsible for each particular issue could be a useful accountability mechanism. The Nationals also noted that the problems have probably stemmed from a lack of resources and poor communication across the agency. In response to a question about the administrative errors made by the SEO during the election campaign period, the NSW State Director commented:

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.⁵⁶

- 3.36 The Committee is of the view that communication across the SEO needs to be improved and that the SEO needs to develop a better structure that provides not only support for the officers of the SEO but also ensure accountability. The Committee notes that a new structure has been finalised for the SEO, which includes an Election Branch with a dedicated client services section (see Appendix Four). The Committee

⁵⁴ Ibid, pp. 2 - 3.

⁵⁵ ALP (NSW Branch), Submission to the Inquiry, p. 2.

⁵⁶ Transcript of evidence, Monday 6 June 2005, p. 3.

is hopeful that this new structure will help to ensure that consistent advice is provided to all clients and that there is a chain of accountability.

Consistency in procedures used by staff involved in the counting of votes

3.37 The Committee received a submission from Peter Brun who had been a scrutineer at the Local Government elections held in March 2004. Whilst, local government elections are not part of the Committee's terms of reference, the SEO are responsible for co-ordinating local government elections and the procedures used for the counting of votes at these elections are the same as those for the Legislative Council. As such the comments made in relation to the procedures used are relevant to the Committee's inquiry.

3.38 Mr Brun raised in his submission the inconsistency of procedures used by data entry operators who were entering the votes noting that some operators appeared to be more systematic than others in the approach taken. He commented:

...Many operators, but not all, counted the bundles before starting the entry process, attaching a sticker every 25th BP [ballot paper]. I questioned why some did not. Some supervisors then ordered those operators to do so, but one said they did not have to. I had this checked and was advised that they did not have to. This practice does however provide an important cross-check for the operator every 25 BPs. I noted one operator who had got confused and she was able to go back to the previous sticker and check where she was. I noted another operator, who when he reached the 75 sticker, was, according to the computer, at number 76. He merely moved the sticker back a BP. I called in the supervisor who made him recheck the BP count.⁵⁷

3.39 Mr Brun also noted that supervisors of the count were inconsistent in the way in which they dealt with scrutineers who found errors in the count and argued that further training for supervisors in relation to the data entry process and scrutineering is required:

The rules for scrutineers apparently forbid talking to the operators. Any problems have to be referred to the supervisor. Supervisors seem to have had different ideas about what scrutineers should do if they found an error. With some it was acceptable to stop the operator and call the supervisor. Others said that the scrutineer should not stop the operator, but note the bundle number and the ballot paper number and call the supervisor. This is not possible as the bundle number is on a schedule bound to the top bundle and it becomes hidden as each BP is entered and turned over after entry. Furthermore the supervisor may be attending another problem and therefore not immediately available. As to the ballot paper number, this was hard to read on the computer screen, because it was small and feint. One supervisor told me I should put a challenge sticker on the ballot paper. I asked the next senior level of supervisors about this, and they knew nothing about it. The same supervisor accused me later when I stopped an operator, but I told her that others did not object and she immediately accepted it too. I noted other scrutineers talking to operators. This type of thing raises questions about the effectiveness of the training of supervisors and operators.⁵⁸

3.40 Mr Brun elaborated on the conflicting advice provided by supervisors and inconsistent procedures used by data entry operators in evidence:

⁵⁷ Peter Brun, Submission to the Inquiry, p. 3.

⁵⁸ Ibid, p. 3.

CHAIR: You also raised concerns about inconsistencies in procedures used by data entry operators and supervisors. Would you outline some of the inconsistencies you saw while scrutineering?

Mr BRUN: With the supervisors you get different versions of what you are allowed to do. For example, if see a ballot paper that has not been entered correctly, what you actually do? I was told for a start that what you should do is to stop the operator and get the supervisor along. Well, in one case I did that and I was told I was not allowed to do it. I said, "Well, what do I do?" She said, "You have got to note the number of the bundle and the number of the ballot paper in that bundle." Bear in mind there are 200-odd ballot papers in a bundle and as the data entry clerk goes through the ballot papers they are bundled in this corner and they turn them over. There is no way of knowing what the bundle number is, because it is on the top sheet; it is not on every ballot paper. So that was clearly quite impossible.

As to stopping them, on the computer screen each ballot paper is given a number as it is entered. It does not go on the ballot paper itself. It is one little box, quite faint, and you would have to note that. Well, that is just possible but, as I say, you would not know what the bundle was. Then you have to find the operator. That was one particular operator. Other operators, when I stopped a clerk, did not come with any of that. I mean, they could not both be right. I raised some of these points with the more senior people and this particular woman I mentioned was definitely wrong. She must have been inadequately trained to have come up with that.

There was another one who told me that I should put an objection sticker on the ballot paper. None of the supervisors knew anything about that at all. I can only conclude that the training was inadequate. As far as the data entry clerk's go, a lot of them counted a batch and put a sticker on each twenty-fifth ballot paper—so, 25, 50, 75 and so on. That was a crosscheck as they went through. But they did not all do that, and they were not obliged to do it. I reckon that that was pretty important. That is paragraph 6.⁵⁹

3.41 Mr Brun went on to note why it was important for operators to be systematic and also referred to a problem with the verification process whereby the same data entry operator that had put the original data into the system was also responsible for verifying the data. Mr Brun noted:

The Hon. AMANDA FAZIO: Will you explain why you thought it was so important that the data entry operators marked them at 25, 50 and so on?

Mr BRUN: It should be a precision process. There was a woman who got out of kilter at one point and she was able to go back to the previous sticker and check what she had done; she did not have to go back to the very beginning of the bundle. There was another instance this can be a problem, and that is referred to at paragraph 9. This related to one of the verifiers. I do not know how many of you are aware of the process, but each ballot paper is entered twice and then there is a computer verification process to ensure that the entries are the same.

When the entries are not the same, a verifier goes through and checks them. In this instance, there was a significant difference between the two entries, not just a single typo, and she corrected that entry. The next ballot paper was also completely different. I called in the supervisor at that point because that seemed to me to be pretty unusual. What happened was, they were one ballot paper out. At least that was towards the end of the bundle. Once that error was corrected, all the other entries were right. If she had not stopped at that point I do not know how long she would have gone on for. She would

⁵⁹ Transcript of Evidence, Monday 23 May 2005, p. 2.

have had to re-enter every ballot paper and one would have been missed out for some reason or she might have got to the end and found there was an extra one. So, a simple thing by going through and putting a sticker every 25 ballot papers is quite a useful cross-reference.

The Hon. AMANDA FAZIO: When that case you just told us about occurred and you called over a supervisor, did the supervisor tell you that the person doing the data entry was in error in trying to correct them like that?

Mr BRUN: No, she did not.

The Hon. AMANDA FAZIO: So she made no comment on what had gone on?

Mr BRUN: No. I think what happened, there was an extra ballot paper in there. One of the original entry clerks had failed to enter that ballot paper, and that is why they got out.⁶⁰

- 3.42 Mr Brun's observations indicate that there is no clarification of best practices and accountabilities and their communication to data entry operators and supervisors involved in processing votes. It also highlights the need for adequate training of both data entry operators and supervisors. In addition, the Committee is concerned that the SEO has not put in place appropriate risk management processes in relation to the counting of votes by allowing the same data entry operator to verify the data they had entered without providing an independent check.

RECOMMENDATION 6: That the SEO ensure that all staff involved with the counting of votes for the Legislative Council at the central counting centre are adequately trained so that consistent procedures are used.

RECOMMENDATION 7: That the SEO ensure that appropriate risk management strategies are in place in relation to verifying data entered as part of the counting process at the central counting centre.

CONSISTENCY OF PROCEDURES ACROSS STATE AND FEDERAL ELECTIONS

- 3.43 A number of issues that were raised in the Committee's inquiry stemmed from different rules applied in relation to Federal and State elections. These issues include: requirements regarding electoral material, such as the distribution and display of electoral material at polling places; the criteria to be a general registered postal voter; the criteria for declared institutions; and the places chosen to be polling places.
- 3.44 The inconsistencies that occur in the procedures and rules across Federal and State elections is a by-product of our different electoral laws. A submission to the inquiry from the Byron Bay Branch of the ALP noted how inconsistent provisions could result in confusion and create difficulties for local institutions.
- 3.45 The Branch raised concerns about a community owned nursing home in Byron Bay that was a declared institution under the *Commonwealth Electoral Act 1918* (Cmth) but did not meet the criteria under the NSW legislation. As noted, declared institutions include institutions such as nursing homes and hospitals and enable patients to vote prior to election day. The Branch noted that they raised the matter with the District Returning Officer and were advised that the nursing home did not meet the criteria under the *Parliamentary Electorates and Elections Act 1912* to be a

⁶⁰ Transcript of evidence, Monday 23 May 2005, pp. 2 – 3.

declared institution as it was less than the required distance from the nearest polling place. This inconsistency required the transporting of residents in the nursing home to a local pre-poll voting centre to cast their votes.⁶¹

3.46 Another area of inconsistency that has caused some problems for voters is the criteria for registered general postal voters. The criteria under the Federal legislation is wider than that which is provided for under the NSW Act. It is conceded by the SEO that this inconsistency in the legislation is problematic in that it may result in some people not voting at a NSW election.⁶² This issue is considered in more details in paragraphs 3.70 to 3.72.

3.47 The Committee canvassed the idea of making the rules/procedures in place at State elections consistent to those that apply to Federal elections where appropriate with a number of witnesses. The Electoral Commissioner noted that he supported the idea arguing that it would result in less confusion:

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.⁶³

3.48 The Nationals noted that it would be particularly beneficial to party workers if the rules and procedures were consistent across Federal and State elections. The NSW State Director commented in evidence:

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.⁶⁴

3.49 The Committee is of the view that it would be beneficial for the administrative procedures in place at State elections to be consistent with those that apply to Federal elections where appropriate. This would assist people working for political parties, candidates and the general public alike. The Committee makes a number of recommendations in regard to specific administrative procedures throughout the report.

⁶¹ Byron Bay Branch of the ALP, Submission to the Inquiry, p. 1.

⁶² State Electoral Office, Submission to the Inquiry, p. 11.

⁶³ Transcript of evidence, Monday 6 June 2005, p. 53.

⁶⁴ Ibid, p. 6.

POSTAL VOTING

3.50 A number of concerns regarding postal voting were raised throughout the inquiry process. The Committee was particularly interested in the difficulties that are faced by rural postal voters in terms of ensuring ballot papers are received by voters prior to polling day and are able to be returned to the SEO within the specified time. Consideration was also given to the criteria for General Registered Postal Voters, streamlining the postal vote application and the involvement of political parties in the postal voting process.

Difficulties for rural postal voters

3.51 The SEO commented in its submission that postal voters in remote areas of rural New South Wales face a number of difficulties due to the tight timeframe for a general election and the mail delivery service. The SEO noted:

In some rural locations mail is not delivered on a daily basis...in some locations a three day per week delivery is provided. Bearing in mind the eight working day time frame to receive a postal vote application and issue postal voting material, it is possible that some electors will miss out in receiving their postal voting material before election day. In other cases electors who have posted their postal declaration envelope back to the returning officer will find that it is received after the cut off date for inclusion in the scrutiny (fourth day after election day) as a result of the mail service in rural NSW.⁶⁵

3.52 Despite the SEO's acknowledgement of the problems facing rural postal voters in remote areas of New South Wales there appears to be little pro-active thinking by the SEO on ways to ensure that rural postal voters can actually have a vote that counts. Rather, the SEO see that the problem is the mail service provided to rural New South Wales as the submission stated:

The SEO have no way of addressing the mail delivery service in rural NSW provided by Australia Post.⁶⁶

3.53 The problems facing rural postal voters who live in remote areas of the State is of major concern to The Nationals who commented in evidence before the Committee that voting is a fundamental right and that the SEO should actively seek to improve the current situation:

The Hon. JENNY 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

⁶⁵ State Electoral Office, Submission to the Committee, pp. 13 – 14.

⁶⁶ Ibid, p. 14

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. JENNY 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.⁶⁷

3.54 The issue was also raised with the Electoral Commissioner when he appeared before the Committee. The Electoral Commissioner once again referred to the difficulties with the rural postal system in New South Wales:

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

...

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.

⁶⁷ Transcript of evidence, 6 June 2005, p. 4.

...

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. JENNY 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--

...

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. JENNY 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."⁶⁸

- 3.55 The Commissioner noted that encouraging more rural voters in remote areas of New South Wales to become Registered General Postal voters may assist in ensuring that the votes of such electors are included in the counting process. This is because if people are registered for each election as a postal voter they will be issued with ballot papers as soon as they can be. Whereas, if they apply for an application to be a postal voter for each election they must ensure that the application is received as soon as possible after the issue of the writ to give them every chance of being able to vote.

RECOMMENDATION 8: That the SEO consider informing remote voters about the advantages of becoming a Registered General Postal Voter and also consider abolishing booths in remote areas with less than 100 voters; develop criteria for a minimum number of voters to make a booth viable; and encourage voters who utilised these booths to become Registered General Postal Voters.

- 3.56 Concerns were also raised with the Committee about postal voting from overseas. Mr Alvaro, who was living in China at the time of the 2003 State election, noted in a submission to the Committee that he had made an application for a postal vote but did not receive his ballot papers until after the date of the election. The Committee concedes that if the SEO has difficulty in sending ballot papers to rural New South Wales that there may be even more delays in sending postal voting material overseas, particularly to countries that have poor mail services.
- 3.57 Whilst the SEO appear to be doing very little pro-active work in relation to improving the situation for rural and overseas postal voters, the Electoral Commissioner did note in evidence that electronic voting may be a measure to assist such voters:

CHAIR: 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. DON 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.⁶⁹

- 3.58 The Committee did not receive any submissions or take evidence in relation to electronic voting (e-voting). However, the committee was able to gather some

⁶⁸ Transcript of evidence, Monday 6 June 2005, pp. 49 – 51.

⁶⁹ Transcript of evidence, Monday 6 June 2005, pp. 52 – 53.

information on the experience of other jurisdictions in relation to e-voting as part of its study tour.

- 3.59 A delegation of the Committee met with officials of the Electronic Voting Commission in Dublin and discussed the moves towards e-voting taken by the Irish Government. The Commission was established by the Government in March 2004 to report on the secrecy and accuracy of the electronic voting and counting system that had been purchased and whether it could be applied to the local and European elections that were held in June 2004. This followed concerns being raised by IT professionals regarding the integrity of the proposed e-voting system after they obtained information on the system under freedom of information legislation.
- 3.60 The Commission released an interim report in April 2004, which concluded that it had not been satisfied as to the accuracy and secrecy of the system and as such was “not in a position to recommend with the requisite degree of confidence the use of the chosen system at elections in Ireland in June 2004.”⁷⁰
- 3.61 The Commission reported more fully on its work in relation to the accuracy and secrecy of the system in its First Report released in December 2004. This report notes that whilst overall the voting system appeared to work in relation to the vote gathering, problems were found with the software in relation to the uploading of votes and errors in the counting system.⁷¹ The Commission also identified a number of actual and potential security weaknesses, which included a number in relation to the computer software.⁷²
- 3.62 The delegation also discussed developments in e-voting with staff of the Electoral Assistance Division at the United Nations. At this point in time there are no security guarantees in relation to e-voting systems. They note that if confidence in the electoral process is important that a manual system is less open to fraud. In addition, it was noted that the costs of establishing an e-voting system makes the idea currently unviable and that there are also issues surrounding digital evidence in relation to who is qualified to judge it if an appeal is made. Advice was noted that in their experience telephone call centres established during the election period had been useful mechanisms for not only providing general information on the election process but could also work as a means of enabling rural and overseas voters to vote in a more secure way than e-voting.
- 3.63 E-voting does have advantages in that it can ensure that there are less inadvertent invalid or informal votes and that the time taken to count the ballot papers is reduced. However, the Committee is not convinced that e-voting is secure enough at this point in time to be an effective mechanism to assist rural and overseas voters. The Committee is strongly of the view that voters who are located in rural New South Wales and overseas should not be disenfranchised merely because of their location.

RECOMMENDATION 9: The SEO take a pro-active approach to ensure that voters in rural New South Wales and overseas are not disenfranchised because of their location.

⁷⁰ Commission on Electronic Voting, *Interim Report on the Secrecy, Accuracy and Testing of the Chosen Electronic Voting System*, April 2004, p. 7.

⁷¹ Commission on Electronic Voting, *First Report on the Secrecy, Accuracy and Testing of the Chosen Electronic Voting System*, December 2004, p. 61.

Criteria for Registered General Postal Voters

3.64 Registration as a general postal voter [RGPV] means that, as soon as possible after the close of nominations for an election the ballot papers for the election will be sent to the voter without having to apply at each election. Section 114AA of the *Parliamentary Electorates and Elections Act 1912* provides for the registration of general postal voters. Under the Act an elector can be registered as a general postal voter for the following reasons:

- The elector's real place of living is not within 20 kilometres, by the nearest practical route, of a polling place;
- The elector will not be within the State during any particular period;
- The elector is a patient in a hospital which is not a polling place or declared institution or is seriously ill or infirm and unable to travel from the hospital;
- The elector is seriously ill or infirm and is unable to travel from the place where he or she resides;
- The elector is detained at a correctional centre;
- The elector is enrolled pursuant to a claim made under s.32(3) of the Act (which is where a registered practitioner has certified that the elector is so physically incapacitated that they cannot sign a claim for enrolment);
- An elector whom a registered medical practitioner has certified, in writing, to be so physically incapacitated that the elector cannot sign the elector's name.

3.65 The SEO noted in its submission to the inquiry that the criteria for registration as a general postal voter in New South Wales is not as wide as the criteria for registration as a general postal voter for Federal elections. It is conceded by the SEO that this inconsistency in the legislation is problematic in that it may result in some people not voting at a NSW election:

The criteria for registration at the Commonwealth include [those that apply under the NSW Act] as well as the following three additional categories:

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 beliefs preclude attendance at a polling place on election day.

The State Act does not provide for the above three categories and as such, any elector registered for Commonwealth elections as a RGPV in the above three categories will not be registered as a RGPV for State elections.

At a general election in order to assist electors in the above three categories, the SEO writes explaining that they are not registered as an RGPV for the State purposes and if they are eligible for a postal vote, they need to make a written application.

The SEO recognises that not having the State and Commonwealth legislation consistent makes for some RGPVs to become confused and can possibly result in some Commonwealth RGPVs not voting at a State election.⁷³

⁷² Ibid, p. 56.

⁷³ State Electoral Office, Submission to the Inquiry, p. 11.

- 3.66 The issue was raised with the Electoral Commissioner when he appeared before the Committee and he was supportive of any recommendations to make the NSW legislation consistent with the Commonwealth legislation in relation to the criteria for Registered General Postal Voters:

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

Mr BARRY: I would.⁷⁴

RECOMMENDATION 10: The *Parliamentary Electorates and Elections Act 1912* be amended to make the criteria to be registered as a general postal voter consistent with the criteria under the *Commonwealth Electoral Act 1918* (Cmth).

Involvement of political parties in the postal voting process

- 3.67 Under current arrangements political parties are able to print postal vote application forms at their own cost and send these out to the public at large with a political message on the reverse side of the forms. These application forms include a return paid envelope to the party who then forward the forms onto the appropriate returning officer. The process is used to enable the parties to record that an elector has applied for a postal vote and enable them to forward how-to-vote material to the elector. A number of concerns were raised about this process.
- 3.68 The SEO commented that this process often confuses some electors and implied that the double-handling of completed application forms causes unnecessary delays. The SEO also raised concerns about the inappropriateness of political parties getting into the administration of elections. The SEO's submission argued:

One of the consequences of the main political parties flooding the State with postal vote applications is that some electors (particularly the elderly) become confused and make multiple applications using different party application forms. This can result in some electors receiving more than one set of postal voting material.

Bearing in mind the already tight time line for returning officers to process and issue postal voting material, when electors apply for a postal vote using a political party application form and it is returned in the first instance to the party, this adds further delays into the already tight time frame. In particular, delays occur where the application is received by the party and it is defective and the elector needs to be contacted and advised on options to correct the defect or alternative voting options, such as pre poll

⁷⁴ Transcript of evidence, Monday 6 June 2005, p. 47.

voting. In some cases, the party contacts the elector to advise that the application is defective. Whilst it is acknowledged that in doing such the party is trying to assist the elector, nevertheless, the party is getting into the administration of the election and in the SEO's view this is inappropriate.⁷⁵

3.69 The Electoral Commissioner reiterated his concerns over the double-handling when he appeared before the Committee to give evidence:

CHAIR: Just with regard to the postal votes, there have been 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?⁷⁶

3.70 As noted, the forms sent out by the political parties have a return paid envelope to the party included. If completed forms were to be sent back to the returning officers or the SEO there is an issue of cost that the SEO would need to address. The Electoral Commissioner did not consider that the cost of sending pre-paid envelopes at the expense of the SEO was a problem and noted that the advantages of having the application forms sent directly to the SEO far outweighed any costs involved:

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.⁷⁷

3.71 Other witnesses also supported the idea that completed applications for postal voting should be sent directly to the SEO rather than to political parties. Geoff Ash, Deputy Registered Officer for The Greens in NSW commented:

Mr PAUL PEARCE: You have made a number of comments regarding your concern about the methodology used in relation to postal vote applications. What are your specific concerns?

Mr ASH: Our party has not engaged very much at all in postal voting, so we are far from expert on it. My concern is twofold: first, if voters are returning the application to a candidate rather than to the State Electoral Office's returning officer, there is the possibility—and I am sure it has happened, although I do not have any proof—that it has been sent and the candidate's campaign in some way has stuffed up and failed to get it

⁷⁵ State Electoral Office, Submission to the inquiry, p. 14.

⁷⁶ Transcript of evidence, Monday 6 June 2005, p. 46.

⁷⁷ Ibid, p. 48.

to the returning officer in time. Because there was a third party involved, the voter has missed out on a vote—which would not have happened if it had been sent directly to the returning officer.

The other area of concern is that candidates can accumulate postal vote applications. They say, "We are not going to run down to the returning officer every day and lodge the one or two postal vote applications we have received following letter boxing of the electorate. We will wait until they build up a bit and then we will take them down." What happens is that, as I understand it, the State Electoral Office returning officer receives a big bundle on the last day, because they have been building up in the campaign office of one or more of the candidates. This puts the State Electoral Office under unnecessary pressure, whereas those applications would have been coming in steadily rather than being all lumped in on the one day.

Mr PAUL PEARCE: In order to overcome this, you would have the State Electoral Office canvassing for postal votes, or putting out documents for postal votes?

Mr ASH: No, it is fine for the parties and candidates to be encouraging it, but the application should be returned to the returning officer.⁷⁸

3.72 Antony Green also commented on the issue noting that it would be preferable if applications for postal voting were sent directly to the SEO:

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.⁷⁹

3.73 There have been concerns raised in the United Kingdom recently in relation to the involvement of political parties in the postal voting process with a number of court cases in relation to abuse of the postal voting system. In response to these concerns that Electoral Commission has issued guidelines to political parties in relation to handling postal ballots which provide that all applications for postal votes must be returned to the Electoral Registration Officer's address rather than to a political party "because of the risk of suspicions that the application may be altered and the risk of the application form being delayed or lost in transit."⁸⁰

⁷⁸ Transcript of evidence, Monday 23 June 2005, pp. 7 – 8.

⁷⁹ Transcript of evidence, Monday 6 June 2005, p. 15.

⁸⁰ See The Electoral Commission's Code of conduct for political parties, candidates and canvassers on the handling of postal vote applications and postal ballot papers, dated March 2005. Available at

- 3.74 It should be noted, that the Franchise Section of the Department of the Environment, Heritage and Local Government, which is responsible for the administration of elections in Ireland, advised a delegation of the Committee that in Ireland political parties can send out postal vote applications but the completed forms are not returned to the parties. However, there is a very limited criteria for postal voting that is similar to the criteria for Registered General Postal Voters under the *Parliamentary Electorates and Elections Act 1912* and that there is no provision for ordinary postal voting.
- 3.75 The involvement of political parties in the postal voting process was discussed with the Electoral Assistance Division of the United Nations. It was suggested that one way of ensuring that the political parties were not seen to be misusing the postal voting process would be for the SEO to send out electoral material from all parties that had been registered with the ballot papers for postal voters. They argued that such a measure would be considered fair and is a good equal playing field measure.
- 3.76 The Committee is conscious of the fact that public perception may be tainted by the postal fraud issues that have arisen in the United Kingdom in relation to political parties involvement with postal votes. The Committee however notes that postal voting is more open to fraud in the United Kingdom as there is no criteria that voters must meet before they are able to apply for a postal vote. In addition, the Committee notes that whilst political parties receive applications for postal voting that they are completely removed from the actual voting process as the distribution of ballot papers is done by the District Returning Officers.
- 3.77 In relation to the concerns raised regarding the 'double-handling' of application forms, the Committee concedes that this process may cause unnecessary delays for the SEO. However, the Committee is not convinced that the SEO has been managing applications for postal votes in an efficient and effective manner and therefore considers that political parties have a legitimate role in assisting people to obtain a vote.
- 3.78 The Committee notes that the SEO has been given a significant increase in resources but considers until such time that it has been proven these additional resources have resulted in an improved service that the parties are actually assisting enfranchisement.
- 3.79 On a related note, the current arrangements under the *Parliamentary Electorates and Elections Act 1912* is that applications for postal votes are made to the appropriate District Returning Officer and ballot papers for postal voters are distributed by the District Returning Officers.⁸¹ However, the Electoral Commissioner considered that there is a need for a centralised postal voting operation for the Sydney, Newcastle and Wollongong areas:

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

http://www.electoralcommission.gov.uk/files/dms/CC_16038-11759_E_S_W_.pdf accessed 22 July 2005.

⁸¹ Section 114AA of the *Parliamentary Electorates and Elections Act 1912*.

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.⁸²

- 3.80 Given the tight timeframe for elections in NSW, it was noted by the SEO that people who have submitted postal application forms with errors or omissions may miss out on voting. To combat defective forms it was argued that the postal vote application form should be modified to make it more user-friendly and that having a centralised processing centre for postal voting applications would also assist in providing those voters with defective application forms with information on how to have a vote.

CHAIR: ...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.

⁸² Transcript of evidence, Monday 6 June 2005, p. 46.

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.⁸³

- 3.81 The Committee sees merit in having a centralised postal voting operations centre for the Sydney, Newcastle and Wollongong area that can not only process and distribute all postal voting material but that can also provide advice to voters on postal voting issues throughout the election campaign. The Committee is conscious that this will not help to alleviate the problems with processing applications for those voters in remote areas of rural New South Wales and urges the SEO to have continuing discussions with Australia Post to improve postal voting processes in rural districts

RECOMMENDATION 11: That section 114AA of the Parliamentary Electorates and Elections Act 1912 be amended to provide for applications for postal votes to be made to the SEO and that ballot papers for districts in the Sydney, Newcastle and Wollongong areas be distributed from a central processing unit rather than by District Returning Officers.

HOW-TO-VOTE MATERIAL

- 3.82 Throughout the inquiry many issues in relation to how-to-vote material was considered by the Committee. The Committee discussed the procedures and rules surrounding the registration of how-to-vote material, including whether there is a need for more consistency between the rules in relation to how-to-vote material at State and Federal elections.

Registration of how-to-vote material with the Electoral Commissioner

- 3.83 Under current arrangements, all how-to-vote material that candidates/parties wish to hand out to voters are required to be registered with the Electoral Commissioner.⁸⁴ It

⁸³ Ibid.

⁸⁴ See section 151G of the *Parliamentary Electorates and Elections Act 1912* (NSW).

was put to the Committee that the current arrangements should be changed with such material being registered with the District Returning Officers rather than with the Electoral Commissioner. Antony Green stated in evidence:

... 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.⁸⁵

3.84 This idea was discussed with a number of representatives of political parties. The Nationals saw merit in having an option to register election material at the local level but did note that it should be controlled centrally:

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.⁸⁶

3.85 The Greens did not express a definitive view of the matter but did consider there may be benefits in being able to register election material locally but also conceded that there is consistency in relation to decisions about election material if all material is registered in one place (i.e. with the Electoral Commissioner):

CHAIR: Would the Greens be supportive of moves to register the "how to vote" material with the district returning officer rather than the electoral commissioner, as is currently required?

Mr ASH: That is a good question. If you register at the one place you get consistency in the rulings or more likely to be consistent, although in the local government elections we had some slightly different rulings at times on what we thought was essentially the same material. It might be slightly more convenient for candidates to register it locally. No, I do not have a strong view on that at the moment.⁸⁷

3.86 The Shooters' Party were also asked about the issue and whilst they did not have a view on the matter conceded that it would be preferable for the current system to be improved rather than distribute the responsibility for the registration of election material:

CHAIR: ...Would the Shooters Party support moves to register how-to-vote material with district returning officers rather than the electoral commissioner, as currently required?

Mr BROWN: Without knowing whether that would be more efficient or less efficient, I could not offer an opinion. We addressed the current situation because that is the one we know that we have problems with. I would imagine that, particularly for the Legislative Council, spread across a whole range of individuals that could present problems. So we would probably say that I would rather see the existing system fixed rather than distribute the responsibility.⁸⁸

⁸⁵ Transcript of evidence, Monday 6 June 2005, p. 10.

⁸⁶ Ibid, p. 6.

⁸⁷ Transcript of evidence, Monday 23 May 2005, p. 15.

⁸⁸ Ibid, p. 22.

3.87 When the matter was raised with the Electoral Commissioner, he advised the Committee that he was very much opposed to any suggestion that Returning Officers be given the power to register election material and referred to his experience whilst Electoral Commissioner in Victoria where District Returning Officers did have such powers:

The Hon. DON 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.⁸⁹

3.88 The Committee accepts the position of the Electoral Commissioner that the responsibility for the registration of election material should remain with him to ensure consistent advice. The Committee also recognises that as the decision on whether material is allowed to be registered will remain with the Commissioner whether in the first instance or on appeal. However, allowing the district returning officer to register material would only add an unnecessary step in the process of administering an election.

3.89 On a related note any electoral material that is registered with the Electoral Commissioner is not made public and cannot be viewed by the candidates or registered parties. Antony Green argues in his submission that such material should be publicly available from the time it has been registered in the interest of transparency. He states:

Only New South Wales, Victoria and Queensland require how-to-vote material to be registered. However, New South Wales...maintains an obsessive secrecy, denying everyone access to the registered material.

In both Victoria and Queensland, the public and other candidates have the right to view all lodged how-to-vote material. I see no reason why the NSW act requires this material to remain a secret ahead of polling day. This lack of transparency can only add to public distrust of the electoral process by encouraging talk of 'secret' preference deals.⁹⁰

3.90 A number of political parties are supportive of moves to make registered material publicly available. The ALP argued in its submission that any person on the electoral roll should be able to look at campaign material that has been registered with the

⁸⁹ Transcript of evidence, Monday 6 June 2005, p. 45.

⁹⁰ Antony Green, Submission to the Inquiry, p. 5.

Electoral Commissioner.⁹¹ The Nationals⁹² and The Shooters' Party⁹³ also expressed their support for election material to be made public.

- 3.91 The Committee considers that transparency in election processes is vital to public confidence in the electoral system and democracy. As such, it is of the view that all campaign material that is registered with the Electoral Commissioner in accordance with the *Parliamentary Electorates and Elections Act 1912* should be available to the public on request on election day.

RECOMMENDATION 12: That all election material, such as how-to-vote cards, that are registered with the Electoral Commissioner be available to the public upon request on election day.

Timeframe for registration of how-to-vote material

- 3.92 The Committee heard that the tight timeframes that apply to NSW elections provide only 8 days for political parties to register how-to-vote material with the Electoral Commissioner and to arrange for printing. The Shooters' Party argued in their submission that due to these tight timeframes that the requirement for the registration of election material should be abolished and replaced with a general prohibition on the distribution of election material that is false and misleading or is likely to be false or misleading as is the case in Federal elections. In its submission to the Committee The Shooters' Party commented:

Applications for registration of how-to-vote cards can only be lodged after the draw for positions on the ballot paper and must be lodged no less than eight days before polling day. This creates quite a narrow window for seeking and gaining approval, particularly for material that will be distributed both prior to the election and on election day itself.

Our party found that the SEO was unable to process applications for registration in a timely fashion, due to the fact that all parties were seeking registration at the same time. As a result, we incurred substantial additional printing costs due to the need for the printers to run presses overnight and on weekends to meet distribution deadlines.

We recommend that the requirements for registration of electoral advertising material be abolished (as with federal elections) and replaced with a general prohibition on the distribution of electoral material that is false or misleading, or likely to be false or misleading.⁹⁴

- 3.93 The Greens commented on this suggestion in evidence before the Committee noting that they favoured keeping the current arrangements with material requiring registration:

The Hon. DON HARWIN: ...We have at a State level registration of material handed out on election day. Do you have any comments on that issue generally and specifically in relation to false statements?

Mr ASH: Yes, on balance I think it is a good idea. It is certainly onerous getting all your material registered for 93 electorates, et cetera, but it does stop material being handed out. I imagine there is more false material handed out at Federal elections because of

⁹¹ ALP (NSW Branch), Submission to the Inquiry, p. 2.

⁹² Transcript of evidence, Monday 6 June 2005, p. 6.

⁹³ Transcript of evidence, Monday 23 May 2005, p. 22.

⁹⁴ Submission of The Shooters' Party, pp. 1 – 2.

the lack of requirement to register "how to votes" than there is at State elections so, on balance, we would favour it.⁹⁵

- 3.94 The Committee considered the current arrangements that are provided for under the *Parliamentary Electorates and Elections Act 1912*. Section 151(G)(2) provides that an application for the registration of electoral material for a particular election "...must be made during the period commencing on the day of nomination for the election and ending on the day that is 8 days before the polling day for the election, or during such other period as is fixed by the writ for the election." However, an amendment to the legislation in 1991 provides for applications to be made after the issue of the writ and before the day of nomination for preliminary advice on whether material may be registered pending the inclusion of details as to the names of candidates and the allocation of preferences.⁹⁶
- 3.95 Given this provision, parties arguably are able to prepare for the printing of election material in accordance with this preliminary advice. Accordingly, the Committee considers that the current arrangements for the registration of election material are appropriate and that the tight timeframe is not a significant factor to warrant changes to the legislation.

Cross party support on how-to-vote material

- 3.96 The issue of how-to-vote cards that recommend votes for candidates from different parties was raised with the Committee as part of the inquiry process. Under current arrangements how-to-vote material cannot be distributed if they recommend votes for both Houses unless the candidates in both Houses are from the same party. Antony Green is of the view that this ban should be modified as it discriminates against some candidates. In his submission it is commented:

...Section 151G [of the *Parliamentary Electorates and Elections Act 1912*] contains an obscure ban that prevents how-to-vote cards being distributed that recommend votes in both house of Parliament unless the candidates in both houses are from the same party. This prevents Independents in either house recommending a vote for the other chamber, and can also complicate how-to-vote cards for registered parties.

To illustrate using an interstate example, at the 1999 Victorian state election, the Labor Party chose not to contest two Legislative Council provinces. In those provinces, the Labor Party recommended a vote for either the Green or Australian Democrat candidate. Under NSW legislation, those how-to-vote cards would have been illegal, even if all parties had agreed to their distribution.

This ban was introduced prior to the 1988 state election. Since 1999, the rules governing the registration of political parties have been tightened, including the peculiarly undemocratic provision that parties must register twelve months ahead of the election. The banning of inter-chamber preferences on how-to-vote cards blatantly discriminates against candidates and parties that have not registered as political parties.

If some ban of this sort is to remain, it should be modified along the lines that the candidate for whom a vote is recommended in the other chamber has to agree to being included on the how-to-vote material. So, if for example, a party contesting the Legislative Council opted out of a local Assembly contest, it could recommend a vote for

⁹⁵ Transcript of evidence, Monday 23 May 2005, p. 15.

⁹⁶ See section 151G(2A) of the *Parliamentary Electorates and Elections Act 1912* (NSW).

an Independent, or even another party, but only if that other candidate or party agreed to being included on the registered how-to-vote material.⁹⁷

- 3.97 The issue was raised when Mr Green came before the Committee to give evidence. It was argued by Mr Green that the purpose of registering material is to ensure that how-to-vote material is not misleading and that a candidate of one party running for the Legislative Assembly showing support for a candidate of another party in the Legislative Council is not misleading the electors. He stated:

...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...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 lodge how to vote cards.⁹⁸

- 3.98 The Committee asked a number of political parties whether they supported this suggestion. The Nationals noted that the idea had some merit and should be seriously considered:

The Hon. JENNY 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.⁹⁹

- 3.99 This support may stem from the Party's experience as part of a coalition that has been until recently unable to distribute how-to-vote material that supports candidates from both The Nationals and the Liberal Party. In its submission to the inquiry The Nationals noted that its workers had received conflicting advice in relation to Statewide how-to-vote cards about whether they could issue campaign material that endorsed candidates from both The Nationals and the Liberal Party. If the *Parliamentary Electorates and Elections Act 1912* was amended to allow for campaign

⁹⁷ Antony Green, Submission to the inquiry, pp. 5 – 6.

⁹⁸ Transcript of evidence, Monday 6 June 2005, pp. 9 – 10.

⁹⁹ Ibid, p. 5.

material to advocate votes for candidates from different parties it would clarify the situation.

3.100 The Shooters' Party noted that it was not in favour of allowing candidates from one party recommending votes for candidates of other parties in the other House. In evidence the Chairman of The Shooters' Party argued that he did not support it as there would not be sufficient time to ensure that the broad membership of the party was happy with any decision made by the Party Executive about how-to-vote material supporting candidates of other parties:

The Hon. JENNY GARDINER: Following up on your answer to the question regarding how-to-vote cards, the suggestion has been made that the rules should be modified to enable candidates to recommend votes for the other House, so long as the candidate for whom the vote is recommended agrees to be included in that how-to-vote material. You said you did not support that. Will you tell the Committee why you do not support it?

Mr BROWN: The Shooters Party recently has been involved in a situation with some of our Executive and some members wanting to support another party in the Federal Election, when the party had decided not to run. Our concern would be that members of the other House, and endorsements for such by the party, might not necessarily be all that easy to control, and there may then be some question down the track as to whether those other parties—bearing mind that right up until an election you probably do not know who is going to be standing for which party when, and the structure of most small organisations such as the Shooters Party is that it is only the Executive that can decide those matters, we would be concerned that a decision taken by the Executive under those circumstances could perhaps contravene the wishes of what I would call the conference, the broad membership; whereas, if it is the way it is now you are very limited in what you can do. That is probably a bit safer, shall we say, for the process of the Executive making sure that it adheres to the wishes of conference or the party.

The Hon. JENNY GARDINER: So that there would be insufficient time to really check out the memberships view on such an important issue?

Mr BROWN: I think so, yes. Bearing in mind that some people seem to think the Shooters Party is right wing and other seem to think it is left wing, the Shooters Party is a fairly broad church. We have a lot of people with a lot of different views about—shall I say that once you take the Shooters Party's single issue aside—other things, and I believe that could lead us to some problems because there would not be sufficient time for us to get sufficient feedback from the membership as to how they wished asked to conduct ourselves in that regard.¹⁰⁰

Display and distribution of election material at polling places

3.101 A number of issues regarding the display and distribution of election material at polling places were raised with the Committee as part of the inquiry process. The ALP expressed concern about inconsistencies in relation to the rules regarding the displaying of campaign material at polling places, both across Federal and State elections and across polling places. The Party noted that this causes confusion for those involved in the election process. Its submission commented:

On Election Day parties aren't currently permitted to attach any material to fences around polling booths. This is not consistent with what is allowed on the day of a federal election. This inconsistency causes major problems for volunteers on Election Day

¹⁰⁰ Transcript of evidence, Monday 23 May 2005, p. 23.

because they are unsure about the rules and it's absurd that they are allowed to attach material to private school fences but not public school fences.¹⁰¹

- 3.102 The Committee is concerned that the same rules are not being applied across polling places in NSW elections. It is of the view that this situation reflects the need for the SEO to ensure that polling officials are provided with adequate training and guidelines to ensure that rules are applied consistently across polling places. Detailed consideration is given to the need for increased training of polling officials to ensure procedures and rules are applied consistently in paragraphs 3.14 to 3.42.
- 3.103 The Committee considers that rules in relation to the displaying of campaign material at polling places for NSW elections should be consistent with those that apply for Federal elections.
- 3.104 The ALP also expressed concern over the distribution of election material that has not been registered at polling places on Election Day. The ALP's submission commented:

The current requirement to register material for election is a good one but the process for checking what material has been registered on election day should be revised. Currently it is close to impossible to make sure only registered material is being handed out and if you establish that unregistered material is being handed out there is no way to stop people from handing out unregistered material.

We propose that a copy of all material registered be distributed to all Polling Booth returning officers and that any person on the electoral roll be allowed to request and view material registered to be handed out on election day. The Polling booth returning officers should also be given the power to confiscate any unregistered material being handed out.¹⁰²

- 3.105 The Committee has recommended that campaign material that has been registered in accordance with the provisions of the *Parliamentary Electorates and Elections Act 1912* be publicly available upon request from the time it has been registered. The Committee is aware of the difficulties with ensuring that only registered material is being handed out at polling places on election day and considers that there is some merit in the suggestion put forward by the ALP. The Committee notes that there are penalties for distribution of electoral material that is false or misleading but is concerned that this does not prevent the distribution of all material that is unregistered. Given this, the Committee considers that deputy returning officers, who are in charge at polling booths, should be empowered to confiscate any unregistered material that is being handed out. This will require all registered material to be provided to deputy returning officers located at the booths. However, given the multitude of tasks that polling officials must perform on polling day the onus will be on the party workers and volunteers to inform the polling officials that unregistered material is being distributed.

RECOMMENDATION 13: That deputy returning officers, who are in charge at polling booths, be provided with copies of registered campaign material.

RECOMMENDATION 14: That deputy returning officers be empowered to confiscate any unregistered material that is being distributed at polling places.

¹⁰¹ ALP (NSW Branch), Submission to the Inquiry, p.1.

¹⁰² Ibid, p. 2.

3.106 The ALP argued in its submission that canvassing for votes should be prohibited within 6 metres of a polling place as is the case at Federal elections. It was also noted that to ensure that such a rule is applied consistently across polling places that a clear definition of what is considered to constitute a polling place needs to be provided. The submission stated:

Canvassing for votes should be prohibited within 6 meters of a polling place and the regulations should provide a detailed definition of what defines a polling place. In federal elections some Polling Booth Returning Officers deem the building as the polling place while others deem the fence around the premises as the polling place. This causes inconsistencies and many disputes between candidates and their volunteers and Returning Officers on polling day.¹⁰³

3.107 As an aside, it is interesting to note that in other countries the prohibition on the distribution of campaign material around polling places is a lot tougher. For instance, in Malta there is a prohibition on the distribution of campaign material within 50 metres of the polling booth and material cannot be brought into the polling booth. In Ireland there is a prohibition on the distribution of campaign material 100 metres from the polling place although posters can be displayed at the polling booth.

3.108 The Committee considers that the rules and procedures should be consistent across State and Federal elections where it is appropriate to do so. It considers that the prohibition on the canvassing of votes within 6 metres of a polling place may be one area where it is appropriate as this will prevent confusion with those distributing campaign material. The Committee agrees with the ALP's submission that if such a prohibition is to be applied consistently across the State that a detailed definition of what is deemed to be the polling place is required (i.e. whether it is the actual building or the fence of the premises).

RECOMMENDATION 15: That a detailed definition of what is deemed to be a polling place is included in the NSW electoral legislation or regulations.

RECOMMENDATION 16: That the canvassing of votes within 6 metres of a polling place be prohibited at State elections as is the case at Federal elections.

INFORMATION FOR SCRUTINEERS

3.109 A number of concerns regarding scrutineering were raised with the Committee as part of the inquiry. As previously noted, the Committee received a submission from Peter Brun, who had been a scrutineer at the local government elections held in March 2004. His concerns relate to the procedures in place during the counting of votes.

3.110 Mr Brun raised concerns about the way that scrutineers were informed about the counting of votes. He noted, that scrutineers were misinformed about the time that the counting of votes started. His submission stated:

...There were two shifts, 7am to 3pm and 3pm to 10pm. I was told to attend at 9am as were others; we should have been there at 7am.¹⁰⁴

¹⁰³ Ibid, p.1.

¹⁰⁴ Peter Brun, Submission to the Inquiry, p. 2.

3.111 Mr Brun also commented that there was little information provided as to what the data entry operators were in the process of counting at any given time and suggests that there should be improved signage for scrutineers. He noted:

At 9am there were no signs as to which wards were being counted in which row so I walked down the rows and looked at the ballot papers. I was told some time later that I should have asked the supervisor what was being counted in a row. This was a peculiar instruction as supervisors were often dealing with matters further down the row, and were not easily distinguished at a distance from other operators or indeed other scrutineers. In the early afternoon this information was put up on a whiteboard located outside one of the offices. There were often 2 and occasionally 3 wards being counted at the same time in one double row. There should have been a board or sign at the start of each double row showing which wards were being counted.¹⁰⁵

3.112 The Committee was concerned about the seemingly casual way that scrutineers were informed about the counting of votes and asked Mr Brun to elaborate on his concerns when he appeared before the Committee:

CHAIR: ...In your submission you raised concerns about the way scrutineers are informed about the counting of votes. Would you outline those concerns for the benefit of the Committee?

Mr BRUN: It just seemed to be totally haphazard. I do not know if any members of the Committee have been to the Villawood counting centre, but it is a large open space warehouse. There was a desk that we reported to when we came in and then it was like wandering off into a jungle and finding your own way around. You could see everywhere in the building and there were double rows of computers. I was scrutineering for four local council wards and I have to go through and find out just where they were being counted.

As I said in my submission, there is no indication as to which wards are being counted in any particular row. There might be more than one—in some cases three in one row—and you might have one ward that is being counted in more than one row. The first half an hour was spent trying to work out what was actually going on. You could see people entering things, but not where you really want to be. I thought that was pretty casual. I thought that ought to be tightened up.

The Hon. AMANDA FAZIO: What problems did you observe were being caused as a result of being so casual?

Mr BRUN: It made the scrutineer's task even more confusing, because if you are supposed to scrutineer for, say, one ward, that is the only ward for which you are allowed to go and watch the proceedings. There were 20 rows, and that ward may not be in the process of being counted at that time. You had to literally go around and ask people, and it was not always too clear who the supervisors or more senior staff were. They all dressed slightly casually. They had ID, of course, but you had to get fairly close to them to see exactly what that was. It was a matter of finding your own way around. That just did not seem to me to be the right way of going about it. Does that answer your question?

The Hon. AMANDA FAZIO: Yes.¹⁰⁶

¹⁰⁵ Ibid.

¹⁰⁶ Transcript of evidence, Monday 23 May 2005, pp. 1 – 2.

3.113 Concerns were also raised regarding the lack of guidelines issued to scrutineers. Mr Brun noted that there were no written instructions or guidelines issued to scrutineers to assist them in relation to what they could do:

The Hon. JENNY GARDINER: Were any written guidelines issued to the scrutineers?

Mr BRUN: No. Well, I was not given any.

The Hon. JENNY GARDINER: You were pretty much operating in the dark as to what you could and could not do?

Mr BRUN: That is right. There are certain things one is told—I have done quite a bit of scrutineering—do not touch ballot papers, and so on, and you are only allowed to object or ask to check a ballot paper. You cannot engage in conversation with these people, because they are extremely busy. Those things are pretty obvious. Otherwise, no—certainly nothing written.¹⁰⁷

3.114 The Committee was concerned in the casual way that scrutineers were informed about the counting procedure and the lack of guidelines available to scrutineers, which could lead to confusion and possibly disputes between scrutineers and supervisors responsible for overseeing the count. Mr Brun noted that it would be beneficial for scrutineers to be better informed:

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do you feel there should be much more detailed procedures available for scrutineers, for counters and for supervisors?

Mr BRUN: Yes, I do. It would clarify the position. If I went out there again, I would have the previous experience of it so I would have a better idea of how to go about it, but I think there should be clearly defined procedures.¹⁰⁸

3.115 A delegation of the Committee met with the Electoral Commissioner and staff of the Electoral Commission in Malta. It was noted that the office prepare informal guidelines for scrutineers and that there is an 'understanding' with the two major parties as to what scrutineers should expect and what they are allowed to do during the counting of votes. Interestingly, when the votes are being counted in Malta scrutineers are physically divided from the counters by a perspex barrier to ensure that there are no confrontations. Scrutineers can still raise concerns about certain votes with the Electoral Commission, which then decides on whether votes are invalid or otherwise.

3.116 The Committee notes that in New South Wales most parties provide scrutineers with advice as to what to expect during the election process and often send less experienced scrutineers out with those that have had a much greater exposure to the process. However, by and large scrutineers learn about the process and procedures employed 'on the job'.

3.117 Scrutineers play an important accountability function in Australia's political system by ensuring that electoral officials conduct the counting of votes correctly. The Committee considers that there is merit in providing scrutineers with more detailed information on the election procedures to ensure that they are well informed as to what they should expect and what they are allowed to do. The Committee is of the view that the SEO has a responsibility in issuing scrutineers with guidelines to ensure that scrutineers are properly informed prior to polling day.

¹⁰⁷ Ibid, p. 3.

¹⁰⁸ Ibid, p. 4.

3.118 The Committee notes that the SEO has previously provided information to scrutineers but that this is no longer the case. The Committee also notes that the SEO has received a significant increase in resources and is of the view that information can be provided to scrutineers without adversely impacting on the workload of the SEO.

RECOMMENDATION 17: That the SEO issue guidelines to scrutineers about the election process and advise them about what they are allowed to do during the counting process.

INFORMATION ABOUT AND DESIGNATION OF POLLING BOOTHS

3.119 A number of matters about the designation of and information provided regarding polling booths were raised as part of the inquiry. First, concerns were expressed about the multitude of polling places within close proximity. The Hon. David Campbell MP, Member for Keira, noted in his submission:

Another issue that has been raised with me by confused constituents is a multitude of small polling places within close proximity to each other which is seen as an unnecessary duplication.

Two examples of this are the Corrimal and Corrimal Central polling places which are approximately 250 metres apart and the Corrimal East and Corrimal High polling places which are approximately 200 metres apart.

Constituents have put to me that there is confusion between different elections as to where polling places will be located and what is seen as unnecessary expenditure on extra rental and two lots of staff.

The Committee and the SEO may wish to consider the criteria in selecting polling places in locations such as this.¹⁰⁹

3.120 The issue was raised with the Electoral Commissioner when he appeared before the Committee. The Electoral Commissioner conceded that there had been some flaws in the way in which the SEO designated polling places, including pre-poll facilities due to under-resourcing and the SEO's inability to plan effectively:

Mr PEARCE: ...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 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. JENNY 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

¹⁰⁹

The Hon. David Campbell MP, Submission to the Inquiry.

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. DON HARWIN: Not one in the north-west.

The Hon. JENNY 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.¹¹⁰

3.121 Representatives of the SEO also noted that some organisations such as churches and some public schools were pushing the SEO away from using their buildings due to public liability issues. The Electoral Commissioner noted that there were no powers under the *Parliamentary Electorates and Elections Act 1912* for the SEO to demand the use of facilities for elections as there are in other jurisdictions:

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.¹¹¹

3.122 This issue was discussed with officers of the United Nations Electoral Assistance Division in informal discussions with a delegation of the Committee. The UN was of the view that any facilities that are used for election purposes should not be liable in circumstances where the premises have been used for election purposes as the use is vital for the public interest. This would essentially mean that a limitation of insurance would apply to the premises whilst it was being used for the purpose of an election.

¹¹⁰ Transcript of evidence, Monday 6 June 2005, pp. 54 – 55.

¹¹¹ Ibid, p. 54.

3.123 The Committee understands the concerns that some organisations have in relation to public liability issues but is of the view that those premises that are funded by the consolidated fund should be at the SEO's disposal for election purposes such as public schools. The Committee notes that this would not include the premises occupied by organisations that receive grants etc. from government sources for services. The Committee is also of the view that there is some merit in the comments of the UN but has been unable to consider the legal complexities with such a proposal. This may be something the Government could investigate.

RECOMMENDATION 18: That the SEO be given statutory powers to require the use of premises that are wholly or partially funded from the consolidated fund for the purposes of the State election. This does not include the premises of organisations that receive funds from government sources to provide services.

RECOMMENDATION 19: That the Government investigate the possibility of removing any liability for organisations whose premises are used for election purposes.

3.124 Second, The Hon. David Campbell MP referred in his submission to the designation of polling places near the boundary of electorates. He noted that people had expressed their frustration over the lack of clear signage at polling places that serviced two or more electorates:

Many people have expressed frustration at the lack of clear signage. In one location – Millbrook – at the 1999 and 2003 Election, 3 electorates, Wollongong, Illawarra and Keira were served by this polling place leading to anger and argument. Where possible this conflict should be avoided.

3.125 The Committee is conscious of the difficulties that face the SEO in designating polling places and notes that geography plays an important role. The Committee concedes that there will be a handful of polling places where electorates overlap and there are no viable alternative premises that can be used to avoid this duplication. The Committee does however see the need to ensure that in those polling places that service more than one electorate that clear signs are in place in order to alleviate any confusion that voters may experience.

RECOMMENDATION 20: That the SEO ensure that there is clear signage at polling places that service more than one electorate to alleviate voters' confusion.

3.126 Third, it was argued by a number of political parties that the SEO should provide more information on polling booths. In particular, it was argued that the SEO should advise candidates of the number of entrances/gates that will be open at each polling booth on election day in the same way that the Australian Electoral Commission [AEC] advises candidates of this information for Federal elections. The Greens noted:

In the recent federal election the Australian Electoral Commission (AEC) was able to advise candidates of the number of entrances/gates that would be open at each polling booth on election day. This was of significant benefit to candidates in terms of being better able to organise their roster of booth workers for handing out how to vote cards. As perhaps 90% or more of the same booths are used by both the State Electoral Office (SEO) and the AEC on respective election days it should not be too difficult for the SEO to provide the same information to parties at least a few weeks before election day.

This would avoid candidates being forced to shift workers from one booth to another on election day because a particular booth unexpectedly has an extra gate or two open.¹¹²

3.127 The Greens did however concede that the SEO would need increased resources to provide this sort of detailed information to candidates:

The Hon. JENNY GARDINER: You mentioned in your submission the basic information provided by the Australian Electoral Commission in relation to the number of gates at polling booths. Is it fair to say the standard of professionalism in the Australian Electoral Commission is generally higher than that at the State Electoral Office? Is it fair to say the AEC could be a benchmark in terms of the basic information that goes to political parties, particularly their volunteers, and that is what the SEO should aspire to, generally speaking? Would that be fair comment?

Mr ASH: I think so. The staff of the SEO are just as capable and do a very good job. The final point in this submission is that our party believes the SEO is under-resourced, and the area you mentioned bears that out. I have mentioned this before and tried to find out the number of entrances to booths beforehand and the response was, "On, no, that is too much." Apparently it cannot be done. On the other hand, I put in a submission prior to the last federal election and the AEC was able to provide that information. I am sure it is because the AEC has additional resources. It has significantly more staff per voter, as I understand it, than the State Electoral Office. I believe if you compare electoral offices around the country, the NSW State Electoral Office has a lower staff ratio per voter than Victoria and others.¹¹³

3.128 The Nationals were also of the view that the SEO should provide information about how many gates or entrances are open at each polling place. The State Director argued that this was very important in terms of organising volunteers at polling places in rural electorates. He noted:

...the lack of notification by the State Electoral Office of how many gates or entrances would be open at each polling place...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.¹¹⁴

3.129 The Committee raised the matter with the Electoral Commissioner. He noted that in order to provide such detailed information about polling places that more resources would need to be employed than had been in the past:

CHAIR: ...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

¹¹² The Greens, Submission to the Inquiry, p. 2.

¹¹³ Transcript of evidence, Monday 23 May 2005, p. 11.

¹¹⁴ Transcript of evidence, Monday 6 June 2005, p. 2.

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.¹¹⁵

- 3.130 The Committee is pleased that the Electoral Commissioner has seen that there is a need to identify the selection of polling places as a specific project for upcoming elections. The Committee is of the view that by having a dedicated project officer assigned to the selection of polling places that more detailed information such as the number of entrances that will be open on election day will be provided to candidates as part of this project. The Committee also supports the idea of using the same premises for State and Federal elections where possible and is of the view that it may be prudent for the SEO to liaise with the AEC in the selection of polling places.

RECOMMENDATION 21: That information on the number of entrances and/or gates that will be open on Election Day be provided to candidates.

RECOMMENDATION 22: That where possible, the SEO should use the same premises for State elections as are used by the AEC for Federal elections.

DECLARATION VOTING

- 3.131 Declaration voting refers to pre-poll and postal voting. Due to the range of issues that were raised in relation to postal voting the issue has received detailed discussion elsewhere in the report. This section considers pre-poll voting and declaration voting more generally.
- 3.132 A number of issues regarding the designation of pre-poll voting places have been raised throughout the inquiry. The Hon. David Campbell MP, Member for Keira referred to the duplication of pre-polling places in his electorate and the need to have a single visible location. His submission stated:

In Keira there were 2 pre-poll voting places located approximately 500 metres apart in the suburb of Woonona.

One was the District Returning Officers main office located in a former church and the other was the storeroom in the rear of a former pharmacy in the shopping centre.

Neither location was compliant with disabled access building codes even though that was the reason given for the use of the storeroom.

There was a duplication of effort required from the District Returning Officers staff and a great deal of confusion to potential pre-poll voters as to where they should attend.

In regard to Pre-poll voting in small city based electorates such as Keira, consideration should be given to using a single visible location to improve customer service to pre-poll voters and to avoid duplication of resources by the State Electoral Office.¹¹⁶

- 3.133 Antony Green also referred to the need to have pre-polling places that are easy to find and the need for a large CBD pre-polling centre. He commented in his submission:

¹¹⁵ Ibid, p. 53.

¹¹⁶ The Hon. David Campbell MP, Submission to the Inquiry.

As someone who always works on Election Day, I normally vote at a pre-poll voting centre. As I work in the city, I make use of the large CBD pre-poll voting centre that the Australian Electoral Commission sets up in central Sydney for Federal elections.

Despite the need, such large pre-poll voting centres are not provided at state elections. At the 2003 election, the only Sydney pre-poll voting centre was in the office of the Returning Officer for Port Jackson. This was located on the 11th floor of Town Hall House, a rather complex place to find, as if you entered the building on the wrong side, you found the lifts only went to the 10th floor.

Similar issues arise concerning the provision of absent voting centres on polling day at sites such as Sydney Airport, or as occurred in 1999, at the Royal Easter Show.

The problem seems to be that it is the responsibility of Returning Officers to determine the best place for pre-poll and other specialist voting centres. The Returning Officer is normally more concerned with the collection of votes for his or her own electorate, rather than the broader delivery of service for voters from many electorates.¹¹⁷

3.134 Mr Green recommends that the SEO co-ordinate where the pre-poll and absent voting centres will be located to “ensure that their provision more accurately reflects expected demand.”¹¹⁸

3.135 The submission from the SEO notes that it is in fact the Electoral Commissioner rather than the returning officers who declares the places that have been designated as pre-poll voting places and that the place, dates and hours of opening are published in the Gazette. It is also noted that the office of the district returning officer is usually used unless it does not have good access. The submission stated:

The Act provides that pre-poll voting is to occur between noon on the day of nomination for the election and 6pm on the day preceding polling day.

Facilities are to be available during the ordinary business hours at the office of the returning officer or at an appointed place on a day that is, and during hours that are, declared by the Electoral Commissioner by notice published in the Gazette.

It has been the practice in the past for pre-poll voting to be available at the office of the returning officer. Whilst this is the case in nearly every District across the State, it is unfortunate that in a small number of Districts the returning officer’s office has not been well located for public access. In those cases, an alternate pre-poll voting location was established within the District.

As well in rural Districts, it is usual to provide pre-poll voting facilities at both the office of the returning officer and another (or more than one) location in the District. In those rural Districts which cover vast areas and/or have geographic impediments to travel throughout the District, such alternative pre-poll voting arrangements provide assistance to electors.¹¹⁹

3.136 The SEO claim that additional pre-poll voting facilities are provided in the City of Sydney due to “its large number of visitors and persons employed in the CBD” and also at Sydney Airport.¹²⁰ However, on the list of all pre-poll locations used at the 2003 election, which is an appendix to the SEO’s submission there are no additional facilities located in the City of Sydney.¹²¹ The Committee is of the view that the SEO

¹¹⁷ Antony Green, Submission to the Inquiry, pp. 3 – 4.

¹¹⁸ Ibid, p. 4.

¹¹⁹ State Electoral Office, Submission to the Inquiry, p. 16.

¹²⁰ Ibid.

¹²¹ Ibid, appendix B.

should provide additional pre-poll voting facilities in the City of Sydney and should investigate the possibility of providing a large CBD pre-polling centre similar to that provided by the AEC for Federal elections.

- 3.137 The Committee is also of the view that the SEO should have a set of conditions that all premises selected for pre-poll voting must comply with. Upmost on this list is the need for the premises to be easily located and where possible have disabled access. The SEO has advised the Committee that it plans to embark on a project for the 2007 State election in relation to the selection of polling places. The Committee would like to see the selection of pre-poll places form part of this project, which should ensure that detailed consideration is given to where pre-poll voting centres are to be located.

RECOMMENDATION 23: That the SEO provide a large pre-polling centre in the Sydney CBD for State elections similar to that provided by the AEC for Federal elections.

RECOMMENDATION 24: That the SEO establish a set of criteria to ensure that all pre-poll voting facilities are located in premises that are easy to find and where possible provide disabled access.

- 3.138 The issue of declaration voting was considered by the Committee more generally. The Committee was advised that pre-poll voting in NSW is unnecessarily complex and should be simplified. Antony Green in his submission commented:

Pre-poll voting is unnecessarily complex at NSW elections. At Federal elections, you simply make an oral application for a pre-poll vote, and sign the declaration envelope after voting. Other states have gone even further, simply crossing pre-poll voters off the electoral roll, removing even the need for a declaration envelope.

Yet New South Wales insists on two declarations, the first in applying for your pre-poll vote where you specify the criteria from the act under which you are eligible for a pre-poll vote. Then you must also sign your declaration vote. In the past, I have witnessed arguments between returning officers and voters, with voters being denied votes because they gave a wrong reason for requesting a pre-poll vote.

I see no reason why the provision of pre-poll voting should not be simplified. I understand similar problems occur with other types of declaration votes. It seems ridiculous that voters going out of their way to cast a vote end up having to jump the hoops of an outdated act of Parliament. I do not see why the procedures associated with all form of declaration vote should not be simplified.¹²²

- 3.139 The Electoral Commissioner also expressed the view that declaration voting could be simplified so that a voter only needs to declare that they cannot attend a polling place between the hours of 8am and 6pm:

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

¹²²

Antony Green, Submission to the Inquiry, p. 4.

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.¹²³

3.140 The Committee supports the suggestion that declaration voting should be simplified so that only one declaration is required, which states that the voter is unable to attend a polling place on Election Day to vote between the hours of 8am and 6pm. This will help to ensure that voters do not get confused about which criteria they are seeking to have a declaration vote under. It may also be useful for the SEO to investigate whether procedures for declaration voting in other jurisdictions such as simply crossing pre-poll voters off the electoral roll, removing even the need for a declaration envelope as mentioned by Mr Green could be applied in New South Wales

RECOMMENDATION 25: That the *Parliamentary Electorates and Elections Act 1912* be amended to simplify the procedures for declaration voting so that a voter only needs to declare that they cannot attend a polling place on election day between 8am and 6pm.

RECOMMENDATION 26: That the SEO investigate procedures employed in other jurisdictions for declaration votes with a view to streamlining the procedures in New South Wales.

OVERSEAS VOTING ARRANGEMENTS

3.141 A number of concerns regarding voting arrangements in place overseas were brought to the Committee's attention. A submission received from Joe Alvaro raised a number of difficulties that he had experienced at the Australian Consulate General Office in Shanghai, China when attempting to vote. He noted:

I was concerned about the voting procedures at the Australian Consulate General Office in Shanghai, China:

- a) conflicting information regarding the type of identification needed by Australian citizens when voting overseas, causing difficulties for citizens like myself who wanted to vote;
- b) no attempt by staff to create a physical space in the Australian Consulate General Office (where voting took place) which allowed for me to vote in private (a "secret ballot");
- c) I was handed a hand-written ballot paper for the Lower House, to cast my vote;
- d) I experienced very poor customer service by some staff at the Australian Consulate General Office.¹²⁴

3.142 The Committee raised the issues with the Electoral Commissioner. He noted that overseas voting was arranged through the Department of Foreign Affairs and Trade and that the SEO have little control as to how voting procedures are implemented overseas. He did however concede that the SEO could improve their manuals so that procedures were clear:

CHAIR: There were concerns raised in the submission to the Committee about voting procedures in Consulates overseas, such as, conflicting information regarding the type of

¹²³ Transcript of evidence, Monday 6 June 2005, p. 48.

¹²⁴ Joe Alvaro, Submission to the Inquiry, p. 1.

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.¹²⁵

3.143 In relation to the hand written ballot papers, the SEO advised the Committee that whilst the SEO endeavours to ensure that overseas voting offices have printed ballot papers that there are a number of logistical difficulties that have meant that not all overseas locations have printed ballot papers. The SEO noted:

Not all overseas postal voting offices were issued with printed ballot papers. The SEO intends to provide overseas postal voting offices with printed ballot papers. The logistical difficulty associated with this is in connection with the timeliness of when printed ballot papers for the Legislative Assembly and the Legislative Council are to be available and the time delay in air freighting them to the overseas postal voting offices.¹²⁶

3.144 The Committee understands the difficulties faced by the SEO in relation to ensuring that overseas voting is conducted in an acceptable manner. There is the difficulty of having a Federal agency largely responsible for the administration of voting in overseas polling offices combined with logistical difficulties that arise out of the tight timeframe for NSW elections. The Committee encourages the SEO to ensure that its manuals and procedures are clear so that overseas voting offices are able to implement them in a professional manner. One of the issues that should be made clear in such manuals is the need to ensure that an appropriate space for voting is provided and that voters are able to exercise a secret ballot.

RECOMMENDATION 27: That the SEO improve its manuals and procedures for overseas voting offices so that they are clear and easily implemented.

REPORTING ON ELECTIONS BY THE SEO

Statutory Reporting Powers

3.145 Throughout the inquiry process a number of matters regarding the reporting powers of the Electoral Commissioner arose. Of particular interest to the Committee was whether the Electoral Commissioner should have a statutory requirement to report to Parliament on the administration of elections. This is the case in a number of other jurisdictions in Australia. For instance, under section 17(2) of the *Commonwealth Electoral Act 1918* (Cmth.) the AEC must report to the Minister as soon as practicable after the polling day for a general election on the administration of that election. This report must be tabled in each House of Parliament within 15 days after the Minister receives the report. In Victoria section 8(2)(b) of the *Electoral Act 2002* (Vic.) provides that the Electoral Commission must report to "each House of Parliament

¹²⁵ Transcript of evidence, Monday 6 June 2005, p. 52.

¹²⁶ State Electoral Office, Responses to Questions on notice from the hearing of the Joint Standing Committee on Electoral Matters, 6 June 2005, p. 1.

within 12 months of the conduct of each election on the administration of that election.”¹²⁷

3.146 The Committee raised the issue with the Electoral Commissioner when he appeared before it to give evidence. He indicated that he was supportive of a statutory requirement for the Electoral Commissioner to report to Parliament noting that it was a good accountability measure:

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.¹²⁸

3.147 The Nationals agreed that in the interests of accountability that it would be good for the Electoral Commissioner to report to the Parliament on the administration of elections:

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....¹²⁹

3.148 It was also put to the Committee that it might be useful for the Electoral Commissioner to have statutory powers to report to the Parliament on electoral matters more generally in a similar manner to other statutory officers such as the Auditor-General. Antony Green indicated in his submission that the SEO needs to be able to provide independent advice to government on problems with electoral administration and that by being able to report to Parliament on such matters might be useful:

[The SEO's] funding...needs to be secure enough that the Office can provide independent advice to government on problems with electoral administration in New South Wales. It may also be necessary to clarify the powers of the Electoral Commissioner, perhaps ensuring they have the right to make reports to parliament in a similar manner to the Auditor-General.¹³⁰

3.149 The Electoral Commissioner of Malta advised a delegation of the Committee that he reported to the Parliament after each general election on the administration of the election including all expenditure. He noted that this process enabled him to raise issues that need to be addressed such as boundaries or problems with electoral laws.

¹²⁷ See also section 19 of the *Electoral Act 1992* (Qld).

¹²⁸ Transcript of evidence, Monday 6 June 2005, p. 42.

¹²⁹ Ibid, p. 7.

¹³⁰ Antony Green, Submission to the Inquiry, p. 2.

- 3.150 The Committee is of the view that the Electoral Commissioner should be required to report to Parliament on the administration of elections following each general election in NSW. This requirement will ensure that the Electoral Commissioner is accountable for his administration of elections in New South Wales and will also ensure that the Parliament is informed about the electoral process.
- 3.151 The Committee considers that such reports should provide similar information to what the AEC provides to the Commonwealth Parliament. In addition to providing statistical information on the election result, these reports include general information on the election such as the timetable, enrolment, nominations, polling arrangements and voting. It also includes information on the count, public information provided by the AEC throughout the campaign period, details of election funding and financial disclosure and any litigation that has arisen out of the election.
- 3.152 In relation to reporting on by-elections, the Committee notes that the SEO has a requirement under the annual reporting legislation to report to Parliament annually and considers that this requirement provides the Electoral Commissioner with an opportunity to report on any by-elections that have been held in that reporting period.
- 3.153 The Committee considered the idea that the Electoral Commissioner should have statutory powers to report to the Parliament on electoral matters more generally. However, the Committee is of the view that the Electoral Commissioner does not require additional reporting powers.

RECOMMENDATION 28: That the *Parliamentary Electorates and Elections Act 1912* be amended to require the Electoral Commissioner to report to the Parliament as soon as practicable after the return of the writs for an election on the administration of that election.

Reporting of results by booths

- 3.154 The way in which the SEO report on the results of elections was also raised with the Committee. Antony Green advised the Committee that most jurisdictions across Australia report two-candidate preferred counts by polling place but that the SEO does not report this information despite the fact that it is actually compiled. In his submission Mr Green commented:

Since the early 1990s, it has become standard practice around Australia for electoral authorities to report two-candidate preferred counts by polling place. Initially this information was provided to assist the reporting of results on election night, but a by-product has been the release of these results to the public and interested parties as part of the normal statistical returns.

The 2003 NSW election was the first occasion that two-candidate preferred results were reported to the tallyroom. However, these two-candidate results disappeared after election night, seemingly discarded as being of little worth. In the week following the election, no updates were made of audited two-candidate booth results, and no two-candidate counts were conducted for declaration votes.

As a consequence, while official two-candidate results were available on election night, all counts in the two weeks following election night reverted to simple tallies of primary votes. Even these primary totals were difficult to obtain, as the SEO's website is extremely awkward, reliant upon the generation of slow to download 'pdf' documents.

I would point the committee to the examples of interstate election returns showing the provision of 2CP [two-candidate preferred] and 2PP [two-party preferred] results by booth. The Commonwealth, Victorian, South Australian and Western Australian electoral authorities all provide this data in their statistical returns. The Queensland Electoral Commission does not, but it does at least carry out two-candidate counts during the scrutiny of declaration votes in close seats.

It should be noted that in recent years, the NSW SEO has begun to conduct two-candidate preferred counts by booth for by-elections, and reports these results. However, this procedure has not been extended to state elections.¹³¹

3.155 The Committee questioned Mr Green about his comments when he appeared before it to give evidence. He noted that the results of preference counts by booth was worthwhile information but that at the moment the only reported result is a distribution of preferences for each electorate. He also noted that he had been publishing these booth-by-booth results for the Parliamentary Library using an estimate of preferences and argued that it would be better if the actual results were published rather than estimates:

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.¹³²

3.156 Mr Green did however concede that the SEO would require more resources to be able to publish the preference results for elections booth-by-booth:

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

¹³¹ Antony Green, Submission to the Inquiry, p. 3.

¹³² Transcript of evidence, Monday 6 June 2005, p. 12.

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.¹³³

3.157 As noted by Mr Green in his submission, the SEO has started to produce results by booth for by-elections with the most recent being a report on the Dubbo by-election held in November 2004. The Electoral Commissioner noted that he intended to produce more detailed statistical information than had been published in the past so long as he could manage it:

The Hon. JENNY 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. JENNY 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 an interest in it, as long as we can manage it.

The Hon. DON 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. DON 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. DON 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.¹³⁴

¹³³

ibid, pp. 12 – 13.

3.158 However, later in the hearing Mr DeCelis advised that the SEO do actually receive two-candidate preferred results from the returning officers on a polling booth basis. He commented that whilst the information was available that previous Electoral Commissioners had decided against publishing such results:

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....It is a process we go through on the night but they have chosen not to make it available.¹³⁵

3.159 The Committee is of the view that the SEO should provide similar information to its counterparts in other Australian jurisdictions. Reporting the preference results by booth would provide useful information to not only parties and candidates but also to the media, observers and other stakeholders in the political process. The SEO is advised of the preference results for the different polling booths by the deputy returning officers on election night and should be able to make this information publicly available for general elections in the same way that it is made available following a by-election.

RECOMMENDATION 29: That the SEO include in the statistical returns for a general election and by-elections the two-candidate and two-party preferred results by booth.

NOMINATION PROCESS

3.160 A number of political parties made comments in relation to the administrative arrangements regarding the nomination process for candidates. Under current arrangements there is a myriad of administrative procedures that must be followed. For example, there are a number of different nomination forms that must be completed. For the Legislative Assembly there are two types of nomination forms one for endorsed candidates, which is signed by the registered officer or deputy registered officer of the registered party, and one for independent candidates, which is signed by 15 electors of the relevant Electorate.

3.161 For the Legislative Council there are four different nomination forms. The first form is for registered parties to nominate a single candidate, which is signed by the registered officer or deputy registered officer of a party. The second form is for the nomination of a single 'Independent' candidate who must be nominated by at least 15 electors. The third form is for parties to nominate more than one candidate and the fourth form is for the nomination of a combination of candidates by 2 or 3 different parties.¹³⁶

¹³⁴ Ibid, pp. 61 – 62.

¹³⁵ Ibid, pp. 62 – 63.

¹³⁶ See information on nominations from the SEO's website at http://www.seo.nsw.gov.au/faq/faq_nominations/faq_nominations_3.html accessed 2 August 2005.

3.162 For Legislative Council elections, those candidates that wish to be included in a group on the ballot paper must also complete forms indicating which order they will appear in the group on the ballot paper.¹³⁷

3.163 The ALP expressed the view that some of the procedures could be streamlined arguing that registered parties should be able to nominate all their candidates in a group form. The ALP's submission stated:

We recommend that Registered Parties be allowed to lodge on Group Nomination for all their candidates. This is currently the process federally. This saves the registered parties and the SEO a great amount of resources which are currently employed to lodge and process nominations.¹³⁸

3.164 The Shooters' Party also suggested measures for streamlining the nomination procedure in order to assist parties that have candidates located across the State. In the Party's submission to the Committee it noted some of the difficulties that were experienced in relation to the group claim form, which indicates what order candidates in a particular group will appear on the ballot paper:

For parties nominating a group to contest the Legislative Council, the State Electoral Office requires individual nomination forms for each candidate (Form RO.221B) plus a single combined group claim (Form RO.222).

We understand the purpose of the group claim form is to confirm each member of the group and to indicate the order in which they are to appear on the ballot paper.

Our party encountered a problem arising from the fact that a single group claim form had to be signed by each candidate. With 21 candidates located all over NSW, the nomination form was faxed to and from 16 separate locations. By the time it had been returned from each of these locations, the names and signatures were indecipherable. That led the SEO to question whether they were valid.

We recommend that other options be permitted for verifying group members and their order; for example, a statement on individual nomination forms confirming that the candidate is number X within a particular group.¹³⁹

3.165 The Shooters' Party elaborated on this when they appeared before the Committee to give evidence:

CHAIR: The submission raised concerns about the way in which nomination forms are required to be completed, particularly the single group claim form, which confirms each member of the group and the order in which they are to appear on the ballot paper. Can you outline the party's concerns about this process and the difficulties that have been encountered?

Mr BROWN: Okay. We see no difficulty with the single nomination form. It is with the group nomination form that we feel there is a problem. I suggest the same problem may occur with any similarly structured party. We are only running for the Legislative Council and our candidates are spread all over the State. In order to get them to economically and in a short period of time sign the multiple declaration form we are required to do it by fax. The form, in its final form, is almost illegible. In fact, we had some of our signatures questioned by the State Electoral Office on the basis that they were barely legible.

¹³⁷ See section 81C of the *parliamentary Electorates and Elections Act 1912* (NSW)

¹³⁸ ALP (NSW Branch), Submission to the Inquiry, p. 2.

¹³⁹ The Shooters' Party, Submission to the Inquiry, p. 1.

One recommendation is that perhaps the single nomination forms could be modified to indicate the information required on the multiple nomination forms. We may be wrong, but we believe the information on the multiple nomination form merely confirms the order in which the candidates are to be put onto the how-to-votes et cetera. We suggest that if the single forms had the availability on them for the candidates to so nominate and sign that would achieve the same result. Yes, it would result in more documents for the same purpose but at least the documents would be capable of being used for the purpose for which they are intended—that is, to confirm and define that each individual is happy to sign under the requirements.¹⁴⁰

3.166 The Committee raised this issue with the Electoral Commissioner who noted that the SEO will be considering improving the way nominations can be made:

Mr CORRIGAN: Just on a separate matter again. I think it was the Shooters Party at our last public hearing 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.¹⁴¹

3.167 The Committee is of the view that the administrative procedures for the nomination of candidates could be improved and encourages the SEO to consider procedures that are employed in other jurisdictions when it considers ways to improve the current nomination process. In particular, the Committee is of the view that the SEO should be implementing procedures that are efficient and which do not cause difficulties for candidates and registered parties.

RECOMMENDATION 30: That the SEO review the current administrative procedures for the nomination of candidates with a view to implementing procedures that are efficient and do not place unnecessary burdens on candidates and registered parties.

VOTING BY PEOPLE WITH DISABILITIES

3.168 A number of issues regarding voting by people with disabilities were raised with the Committee as part of the inquiry process. People with Disability Australia Incorporated (PWD), a disability rights and advocacy organisation, made a number of comments in relation to the role of the SEO in ensuring that people with disabilities are not disenfranchised due to their disabilities. They noted in their submission to the Committee:

For a number of years PWD has communicated with the NSW State Electoral Office (SEO) and other electoral authorities regarding the lack of access for people with disability to the electoral system. PWD is extremely concerned that electoral authorities, including the NSW SEO, are denying the civil rights of people with disability through their failure to act on specific access needs.

In particular, the SEO has failed to act on the following:

¹⁴⁰ Transcript of evidence, Monday 23 May 2005, p. 20.

¹⁴¹ Transcript of evidence, Monday 6 June 2005, p. 59.

- the provision of information about electoral processes and arrangements in easy to read, pictorial or similar formats to assist people with cognitive disability to understand the election process;
- the provision of adjustments to voting instructions and ballot papers to assist people with cognitive disability;
- the provision of Auslan interpreters to assist people who are deaf to communicate with electoral staff at the voting booth;
- arrangements for hearing augmentation at the voting booth to assist people who are hearing impaired communicate with electoral staff;
- arrangements to allow people who are blind or with a physical disability which limits hand function to exercise a confidential (secret) and independently verifiable vote by electronic or other means. We are aware of some of our members being forced to disclose their vote to family members or polling officials;
- physical accessibility for polling booths that complies with Australian Standard 1428 Part 2. We are aware of some of our members visiting polling booths that are advertised as fully accessible and finding their requirements unmet. Similarly we are aware of inaccessible polling booths being used when nearby accessible facilities are unused;
- the provision of disability awareness and flexible service delivery training electoral staff working on booths receive to assist them to be knowledgeable and responsive to disability related issues and concerns.¹⁴²

3.169 PWD also commented:

PWD believes that the response of the SEO to the right of people with disability to cast their vote in an equal manner to the rest of the population has been inadequate. Further, we believe that the failure of the SEO to act in this matter may be in breach of both federal and state anti-discrimination legislation.

We have called on the SEO to develop and implement a disability action plan that ensures the right of people with disability to a secret ballot. We welcome an opportunity to work collaboratively with the SEO to overcome these difficulties to ensure that all voters in NSW are able to cast their vote free from discrimination.¹⁴³

3.170 The Committee is of the view that it is important for all citizens who are eligible to vote to be able to cast their vote in an acceptable manner and raised the matter with the Electoral Commissioner when he appeared before it to give evidence. The Electoral Commissioner noted that the SEO was in the process of engaging a consultant to direct a project to develop a disability action plan that would commence in the 2005-06 financial year. He also noted that the process would involve consultation with the political parties and disability groups:

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: 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?

¹⁴² People with Disability Australia Incorporated, Submission to the Inquiry, pp. 1 – 2.

¹⁴³ Ibid, p. 2.

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.¹⁴⁴

3.171 The Committee is pleased that the SEO has realised the need to ensure that people with disabilities have a right to vote in an equal manner to people without disabilities. The Committee looks forward to seeing strategies in place to assist people with disabilities being able to vote in an acceptable manner at future State elections.

SECURITY OF BALLOT PAPERS

3.172 The security of ballot papers has been an issue that has concerned members of Parliament for a number of years. Members have raised concerns in the Parliament regarding ballot papers being left outside venues in garbage bags for days on end and the misplacing of entire ballot boxes.¹⁴⁵ Issues surrounding the security of ballot papers were also raised as part of the inquiry. Mr Brun, expressed concern in his submission that the ballot papers (BPs) for local government elections were located on a pallet in the middle of the warehouse where the count was being conducted and could easily be removed or substituted. He commented:

I spoke to senior supervisors about the flow and security of BPs to and at Villawood. None of those I spoke to knew about the security measures in the transportation, but I was told that once at Villawood, a computer-based schedule of all bundles is maintained, so that their location and stage of processing can be checked at all times. The bundles of BPs are stored on pallets in the middle of the warehouse, from where they were being picked up and moved around for processing. As there are many people wandering around the warehouse, I questioned whether an operator (or more than one acting together) could remove or substitute BPs. Obviously it seemed unlikely, but certainly not impossible especially if there were corrupt officials working together.¹⁴⁶

3.173 Mr Brun also expressed the need for procedures to be in place to enable people to verify that ballot papers have gone from the polling place to the venue where they are counted:

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You also refer to security of the ballot papers?

Mr BRUN: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: In the Philippines a volunteer mob called NAMFREL¹⁴⁷ set up a task force that sat beside and baby-minded every ballot paper on its way to Manila to be counted. Do you think we should have a system like that?

¹⁴⁴ Transcript of evidence, Monday 6 June 2005, p. 63.

¹⁴⁵ See comments by The Hon. Jenny Gardiner MLC on the *Parliamentary Electorates and Elections Amendment (Joint Parliamentary Committee) Bill 2003*, Legislative Council Parliamentary Debates, 22 May 2003, pp. 947 – 949.

¹⁴⁶ Peter Brun, Submission to the Inquiry, p. 4.

¹⁴⁷ National Citizens' Movement for Free Elections.

Mr BRUN: I think there should be some procedure whereby people can follow it through. You occasionally hear about votes being lost in Australian elections. I do not know whether any real hard evidence exists. I know people who have requested to go with the packaged-up ballot papers from the polling booth to the electoral office—this is in the case of Federal elections—and that was refused. It is a massive task. I suppose I would say I think it ought to be available but I hesitate to think what would happen if everyone wanted to do it. It would be pretty chaotic.¹⁴⁸

3.174 The SEO noted in its submission that ensuring that the venue chosen for the counting of votes is secure is a key requirement. However, the SEO also commented that the venue chosen for the counting of Legislative Council votes at the 2003 State election raised a number of security issues. The SEO noted that they were using a multi-level building, which caused a number of logistical problems including the need to use a separate site where ballot papers would be received, counted and batched. The SEO commented about the arrangements:

It raised issues regarding the capacity of the SEO staff to effectively manage two separate venues, both of which were to operate on a 24 hour basis and which were obviously both critical to the successful and timely completion of the election. All procedures for handling ballot papers had to be revised and security issues re-considered and assessed and appropriate plans put in place. This included placement of security guards on a 24 x 7 basis at both sites and the potential security risks associated with the ballot papers being “shuttled” between the two locations in a fleet of small vans.¹⁴⁹

3.175 The concerns that have been raised as part of the inquiry process about the storage of ballot papers at the central counting location and previously by Members of Parliament about ballot papers being left outside and misplaced indicate the need for the SEO to be vigilant in relation to the security of ballot papers. The Committee considers that the security of ballot papers is an area where the SEO need to ensure that adequate plans and procedures are in place in relation to not only how they are stored at the counting centre but also how they are stored at the polling booths and then transported to the central counting centre. This will ensure that voters have confidence that their votes are included in the count and are not substituted or lost.

RECOMMENDATION 31: That the SEO ensure that adequate security assessments are conducted in relation to the storing and transporting of ballot papers.

POLITICAL ADVERTISING

3.176 A number of comments in relation to political advertising were made throughout the inquiry process. The Australian Democrats argued that there is a need to introduce legislation regarding truth in political advertising. The Party commented:

...It is our belief that not only is it possible to legislate against false or misleading political advertising, but it is incumbent upon the legislature to do so if we are to help restore trust in politicians and the political system.

This belief has been vindicated in South Australia, where Truth in Political Advertising legislation has long been in place. The South Australian legislation has been tested in the Full Court of the Supreme Court of South Australia, where it was found not to

¹⁴⁸ Transcript of evidence, Monday 23 May 2005, p. 5.

¹⁴⁹ State Electoral Office, Submission to the Inquiry, p. 34.

impede the implied right of 'freedom of speech' and was therefore held to be constitutionally valid.¹⁵⁰

3.177 The Greens also commented on the issue of truth in political advertising. In their submission they argued that there is little that candidates, whose credibility is damaged by untrue information, can do within the election period. They also expressed concern that section 151A of the *Parliamentary Electorates and Elections Act 1912*, which deals with the publishing of false information, is too narrow. They commented:

Section 151A of the *Parliamentary Electorates and Elections Act 1912*...is far too narrow. It is confined to misleading a voter "in relation to the casting of his or her vote" which we understand has been interpreted by the courts as being confined to false or misleading information influencing a voter in the act of numbering a ballot paper. The narrowness of the provision fails to prohibit simple false statements designed to damage a political opponent during an election campaign. Such a limited interpretation deters only a small percentage of people who publish false or misleading information during an election campaign.

Legislative provisions which prohibit false or misleading statements being made about a party or candidate whether it be by an individual or a media outlet are needed to enhance democracy.

The penalties for breach of this provision should be strong. Matters would need to be referred to an independent election tribunal that could: adjudicate on the truth of a statement quickly if election day was imminent; have power to make public announcements before the election about the inaccuracy of published statements; and impose an appropriate penalty.¹⁵¹

3.178 The matter was discussed with the Electoral Commissioner when he appeared before the Committee. He noted that the SEO should not be involved in judging on the truth of any political advertising commenting that if the Office was to get involved that there would be an endless stream of allegations regarding political advertising that could not be dealt with by the SEO. He also commented a solution to the problems would be that if a person is convicted of defaming a candidate that such a conviction could provide a means to take the matter to the Court of Disputed Returns, which could then decide on whether there has been a fair election:

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, BUGA UP¹⁵², you may have heard of. The system was abandoned in terms

¹⁵⁰ The Australian Democrats, Submission to the Inquiry, p. 6.

¹⁵¹ The Greens, Submission to the Inquiry, pp. 4 – 5.

¹⁵² Billboard Utilising Graffitiists Against Unhealthy Promotions

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.¹⁵³

3.179 The Committee is conscious of the fact that the election process is a fierce contest and that there may be times when statements made about candidates are ambiguous or open to interpretation. However, given that the election period in New South Wales is so short it sees difficulties in the suggestion that an independent body be established to adjudicate on the matter as no thorough investigation could be conducted on whether purported statements were false or misleading. The Committee agrees with the Electoral Commissioner that the SEO should not be involved in deciding on the truth or otherwise of political advertising. It also agrees with the Electoral Commissioner's comment that it is up to the people to judge the truth or untruth of political advertising that is published or broadcast throughout the election period.

VOTER IDENTIFICATION

3.180 The issue of voter identification, both for purposes of enrolling and for voting was raised during the Committee's inquiry. Reference was made by a witness before the Committee about the Federal Government's proposal for voters to produce

¹⁵³ Transcript of evidence, Monday 6 June 2005, p. 56.

identification on enrolment.¹⁵⁴ The Committee raised the matter with the Electoral Commissioner when he appeared before the Committee. He noted that the Federal Government had proposed legislation to provide for identification to be produced when enrolling to vote and that the State would need to consider the issue if they wished to preserve the joint enrolment process:

The Hon. JENNY GARDINER: One of the witnesses 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.¹⁵⁵

3.181 In relation to voters being required to produce identification when voting, the Australian Democrats argued that there is such a need:

Voters should have to present some ID at their booths. There could and should be a central computer with an online database to prevent multiple voting.¹⁵⁶

3.182 The Committee was advised that Mexico has a complex voter registration system and that ID cards are issued to all citizens enrolled to vote. This voter ID card has become a 'quasi-National ID card' and is used by many as an important proof of identity in Mexico.

3.183 Voter ID is also used in Malta. Michael Falzon from the Maltese Labour Party advised a delegation of the Committee that voters are issued with an ID card for each election and voters cannot vote unless they are able to produce this ID. The ID card is given out by the police, under the supervision of the political parties, during the election campaign period. Voters can also collect their ID's from the Electoral Commission if the police have been unable to issue it to the voter before polling day.

3.184 Electoral officials in Ireland advised a delegation of the Committee that it is not compulsory for all voters to show ID when voting but that voters are randomly selected to produce ID.

3.185 There have been a number of attempts to pass legislation requiring voters to produce ID's in New South Wales.¹⁵⁷ However, none of these attempts have been successful and under current arrangements no identification is required to either enrol to vote or when voting.

3.186 Antony Green commented on the issue of voter fraud and the electoral rolls when he appeared before the Committee noting that voter fraud was not a significant problem. He commented that there had been a number of instances in the past blown out of

¹⁵⁴ See comments made by Peter Brun, Transcript of evidence, Monday 23 May 2005, p. 5.

¹⁵⁵ Transcript of evidence, Monday 6 June 2005, pp. 59 – 60.

¹⁵⁶ The Australian Democrats, Submission to the Inquiry, pp. 3 – 4.

¹⁵⁷ See the *Parliamentary Electorates and Elections Amendment (Voter Identification) Bill 1995* and the *Parliamentary Electorates and Elections Amendment (Enrolment and Voting) Bill 2000*.

proportion and that the procedures had been tightened up in relation to registering to vote:

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do you think that the rolls are reliable and or that there is significant rorting 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 their own 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.¹⁵⁸

3.187 Mr Green also argued that requiring voters to produce an ID would slow down the voting process and discourage people from voting and that if there is reason to believe that significant voter fraud, which had resulted in the election of the wrong candidate, that the matter would be resolved by the Court of Disputed Returns:

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 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-hoc, 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.¹⁵⁹

3.188 The Committee considers that the issue of voter ID is something that the Government will need to consider in relation to the joint-roll arrangements that are currently in place. If it becomes a requirement for voters to produce proof of identification on enrolment under the *Commonwealth Electoral Act 1918* (Cmth.) it will be necessary for complementary legislation to be passed in New South Wales to ensure that the joint enrolment processes remain as noted by the Electoral Commissioner.

3.189 The Committee is however hesitant in relation to recommending that voters be required to produce identification when voting. The Committee agrees with the

¹⁵⁸ Transcript of evidence, Monday 6 June 2005, pp. 13 – 14.

¹⁵⁹ Ibid, p. 14.

comments made by Antony Green that requiring voters to produce identification would slow down the voting process and result in less people voting. Whilst there are some political parties that believe that there is some electoral fraud, the Committee does not agree and does not see the need for voters to produce identification to vote. Of course, if changes were introduced at Federal elections requiring voters to produce ID there may be cause to reconsider the proposal for New South Wales elections.

CONFIRMATION OF ENROLMENT AND VOTER REGISTRATION

- 3.190 The terms of reference for the inquiry specifically refer to the procedures and provisions relating to the confirmation of enrolment. Under the *Parliamentary Electorates and Elections Act 1912* the Electoral Commissioner is responsible for the registration of electors and the preparation of the electoral roll. The Act also provides for NSW to enter into arrangements with the Commonwealth regarding the preparation, alteration and revision of rolls of electors so that electoral rolls can be used at both Commonwealth and State elections. The arrangement is known as the Joint Roll Agreement and is administered by the AEC. A copy of a briefing note prepared for the Committee by the SEO on the Joint Roll Arrangement is attached at Appendix 7.
- 3.191 The matter did not receive much attention and was only commented on by the SEO. The SEO provided the Committee with information on enrolling at election time noting that to be eligible to vote electors must submit their enrolment details prior to the Close of Roll:

At the time of a NSW State general election, the SEO undertakes a comprehensive advertising campaign to attract electors' attention to the need to correct their enrolment details prior to the Close of the Roll. The roll for each parliamentary election closes at 6.00pm on the day of issue of the Writ for the election and is usually about three weeks prior to polling day.

...

Claims for enrolment received prior to the Close of Roll for an election are processed and an Acknowledgement Card issued to the elector as confirmation of their enrolment.¹⁶⁰

- 3.192 The submission from the SEO also noted that it has been the practice of former Electoral Commissioners to request the AEC to withhold Acknowledgement Cards for those voters who have enrolled after the Close of Roll in order to prevent any confusion for those voters who were late in submitting a claim for enrolment. The SEO did however, note that in other jurisdictions that interim acknowledgement cards are issued to those voters who have submitted claims for enrolment after the Close of Roll:

A practice exists in some other jurisdictions across Australia where Interim Acknowledgement Cards are sent to those electors whose claim for enrolment is received after the Close of Roll date and prior to polling day. This practice has the effect of alerting electors as to their enrolment status at the current election and advising them of options for voting.

For instance, where a claim form was submitted late by an elector who had moved address they would have, in the past, received no subsequent advice as to whether that card had been processed in time for the current election. This could leave the elector

¹⁶⁰ State Electoral Office, Submission to the Inquiry, p. 17.

uncertain as to their enrolment status and cause that person to attend a polling place on election day to record a vote for their new address only to find that their name did not appear. It most likely would not occur to the elector that their name may, nonetheless, continue to appear on the roll for a previous address.¹⁶¹

3.193 The SEO have noted that the practice of sending interim acknowledgement cards alerts electors as to their enrolment status at the current election and have stated that they will have discussions with the AEC before the next general election on implementing such an approach.¹⁶²

3.194 The Committee is of the view that it would be beneficial for voters who have submitted a claim for enrolment which has been received after the Close of Roll to be notified as to their enrolment status for the current election and voting options. The Committee encourages the SEO to consult with the AEC about implementing a system of interim acknowledgement cards for such electors.

¹⁶¹ Ibid, p. 18.

¹⁶² Ibid.

Chapter Four - The problems of the Counting of Votes for the Legislative Council at the 2003 NSW Election

INTRODUCTION

- 4.1 A significant aspect of the Committee's terms of reference into the administration of the 2003 State Election related to the problems associated with the finalisation of the counting of votes in the Legislative Council. The SEO provided the Committee with information on the problem as part of its submission and also in evidence, indicating that the cause of the problems was the development of the software.
- 4.2 The Committee engaged BMM International to assist in its understanding of the nature of the problem and commissioned BMM to conduct a post critical incident review of the problems encountered in the finalisation of the counting of votes in the Legislative Council 2003 periodic election. BMM International have experience in relation to technology used in the electoral process having conducted technical audits of the electoral offices of both Victoria and the ACT and it was considered by the Committee that they were in a better position to assess the evidence at hand.
- 4.3 This chapter is the product of the work conducted by BMM. It identifies the nature of the problems, ascertains why the problems occurred, why they were not identified earlier and considers ways to ensure that similar problems do not occur with future IT projects.
- 4.4 The material available for the review was limited to:
- Pages 18 – 41 & appendices D, E & F of the submission of the State Electoral Office [SEO];
 - The evidence of the SEO given on 6th June 2005; and
 - Supplementary information provided in answers to questions taken on notice.
- 4.5 The material made available for the review was consciously limited to that publicly available. This meant that a number of assumptions have been made about the computer software used by the SEO in the election. These assumptions are clearly identified below.
- 4.6 The company responsible for maintaining the vote counting software went through several name/entity changes and is referred to in the material as:
- First State Computing;
 - Syntegra (Australia) Pty Ltd; and
 - Hansen Technologies.
- 4.7 For simplicity, they will be referred to as Hansen Technologies.

BACKGROUND

- 4.8 The table overleaf shows the evolution of the software used by the SEO for the counting of votes for the Legislative Council elections. Software was first used in 1988, supplemented by manual processes to perform transfer of value calculations and distribution of preferences.

4.9 After the 1995 election, the SEO decided that they needed a solution that would provide greater efficiencies and achieve a result within a reduced timeframe. Their preferred option also included entering of preferences from the ballot papers, distribution of the preferences and producing the election result.

Year	System	Manual	Vote type
1978	--	All	
1988	On-line data input system	Manual transfer value calculations and distribution of preferences	List system
1991			
1995	Updated system	Manual distribution of preferences	List system
1999	Modified AEC system	Manual group preferences	
2003	Re-engineered system	None	Group preferences

4.10 The SEO purchased the AEC's Senate Scrutiny system and engaged Hansen Technologies to customise the software to suit SEO requirements. This application underwent a robust testing regime involving system/integration testing, volume testing and user acceptance testing. It was used successfully at the 1999 election.

4.11 Significant amendments to the *Parliamentary Electorates and Elections Act 1912* were introduced in relation to Legislative Council elections in 2000. These amendments were introduced to address the large number of political parties that registered in the 1999 election. The amendments also introduced the provision for electors to allocate preferences for groups by allocating preferences 'above the line'.

4.12 The amendments of 2000 introduced a complexity that rendered the vote counting software developed in 1999 redundant. The software was supplemented by manual processes, which were no longer possible given the complexity of the new changes.

4.13 A decision was made to modify the existing software instead of developing a new system. This allowed them to re-use some of the architecture, design and components that were contained within the existing system. The relative costs of the two options also contributed to this decision.

THE LEGISLATIVE COUNCIL SOFTWARE

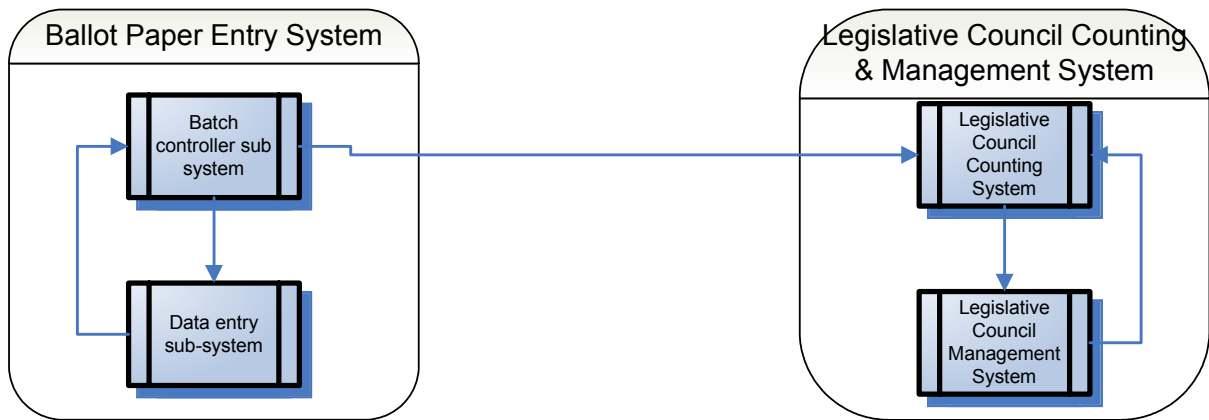


Figure 1: Legislative Council Software Composition

4.14 Figure 1 above shows the composition of the software used in the 2003 election. The software comprised of two separate systems:

- The Ballot Paper Entry System; and
- The Legislative Council Counting & Management System.

Ballot Paper entry system	
Batch controller sub system	Used to register ballot paper batches into the system, control the data entry process and generate management reports.
Batch data entry sub system	Used for entry and verification of ballot papers.

Legislative Council Counting & Management System	
Legislative Council Counting System	Performs the main vote count and distribution of preferences
Legislative Council Management System	Manages & controls the data set up, provides management enquiry facilities, generates reports on the election count and produces the statistical return

4.15 Information about the software has been constructed from the review material. The following assumptions have also been made about the redeveloped system used in the 2003 election:

- The redevelopment of the system incorporated the development of a data entry screen. This was the batch data entry sub system. There were no enhancements to the back end or the vote counting component;
- In the 1999 election, the data entry PCs were non-networked to the batch controller PC. Data was transferred between the batch PC and the data entry PC. It is assumed that this was not changed for the 2003 election; and
- It is unclear where the pre-count process resides. In this chapter, it has been included in the Legislative Council counting and management system. This does not affect the conclusions made.

4.16 The table below shows the logical process steps that took place in the 2003 election.

1.	Receive batch of ballot papers and register the batch into the system.	Ballot Paper entry system
2.	Allocate batch to floor/location.	
3.	Transfer data from batch controller PC to data entry PCs using floppy disks.	
4.	Batch passed onto data entry operators to enter into the system.	
5.	Data is entered twice to verify accuracy.	
6.	Transfer data into batch controller PC from data entry PCs using floppy disks.	
7.	Management reporting: <ul style="list-style-type: none"> ▪ Ensure that all batches were registered, confirmed and verified; ▪ All polling places and all types of declaration votes for each district were accounted for; and ▪ All data released for counting. 	
8.	Transfer data from batch PC database to the count engine.	Legislative Council Counting & Management System
9.	Pre-count process.	
10.	Count process.	
11.	Produce reports and statistical return.	

PROBLEM IDENTIFICATION

4.17 Two major problems were identified in the 2003 election:

- Poorly optimised index tables which prevented the pre-count process from proceeding; and
- Entry of non-preference data (zeros) into the character entry system, which the software did not recognise as valid preferences and caused a number of formal votes to 'exhaust'.

4.18 Both problems emerged in the pre-count process (step 9). The problems caused a delay in the finalisation of the count. The Electoral Commissioner called for a halt in the process while the IT personnel investigated and fixed the problems. However, the count was still completed within the time interval required by legislation.

CAUSE OF THE PROBLEMS

Index tables

4.19 The problem with the index tables caused the 'pre-count' process to run very, very slowly. It was so slow that 'it was not possible to even estimate how long the pre-count process was likely to take'.

4.20 Index tables perform much the same function as an index in a book, in that they operate as pointers to, or identify records in tables. Database systems rely on index tables to quickly locate specific items of data stored in them.

4.21 Index tables are stored separately to the actual data in the database. They can become poorly optimised after some time or when the size of the data becomes too big. When this happens, the processes that use the index table take a lot longer to find the data it requires.

4.22 Routine maintenance of a database often includes the re-creation of all index tables. Re-creating the indexes does not affect the data stored in the database. It only increases the efficiency of processes accessing the data in the database.

4.23 According to the review material, the problem stemmed from a combination of indexes being disorganised due to the large data entry effort of the preceding 13 days and/or incompatibility between the database and its configuration with the computer server used to support the count.

4.24 No details about the type of database or the server configuration have been provided in the review material. However, it is very likely that either or, both of these could have contributed to a problem with the index tables.

4.25 The standard solution to this type of problem is to re-create indexes. This approach was applied to the database by the IT contractors and found to resolve the processing problems.

4.26 Given the symptom of poor performance in the speed of the counting process and the fact that rebuilding the indexes solved the problem confirms that there was definitely a problem with the index tables.

Entry of non-preference data (zeros)

- 4.27 The IT personnel undertook further testing of the software to ensure that there were no further indexing issues. They identified a problem with the entry of non-preference data, which prevented the software from proceeding with the count.
- 4.28 They discovered that 'non-preference' data had been entered into the system during the data entry phase. A zero preference was entered in the field that related to the square closest to the markings to represent 'out of square' markings.
- 4.29 Unfortunately, entry of zero values in the preference field caused problems with the count process by misrepresenting the value of some votes and causing a number of formal votes to prematurely exhaust.
- 4.30 A copy of the database was taken to allow a full investigation into the problem and a solution to the problem was devised. The IT personnel, SEO's IT consultant and SEO's Legislative Council election manager supervised the investigation and the testing of fixes used on the production database.
- 4.31 IT contractors (responsible for the investigation and repair of the system) wrote a program to identify and remove zero preference entries.
- 4.32 The data fixes did not impact on legitimate preference data entered into the system and only involved removing the zero data which was being used to represent 'out of square' markings.
- 4.33 While the problem was unfortunate, the steps taken to investigate and fix the problem adhered to standard industry practice. Precautions were taken to protect the integrity of the data by testing on a copy of the database. The fixes were then applied to the preference database.
- 4.34 The SEO also took the precaution of getting two separate contractors to manage the separate databases with another IT consultant and their Legislative Council election manager overseeing the process. This ensured sufficient security of the database holding the ballot paper preference details.

LATE DETECTION OF THE PROBLEMS

Resources

- 4.35 A significant issue that contributed to the late detection of the problems was a lack of SEO resources.
- 4.36 At the time of the 2003 election, the SEO had 21 permanent staff. The office also had the responsibility for the conduct of the local government elections which placed extraordinary demands on the few senior staff who have knowledge and expertise in the count of the Legislative Council elections.
- 4.37 The Project Manager responsible for managing the redevelopment project had no previous exposure to the system or to the legislation. Instead, significant responsibility was given to one person within SEO who had a working knowledge of the software and legislation.
- 4.38 The role included:

- Leading the team through the requirements documentation;
 - Providing them with the knowledge required for the preparation of the high level design and functional specification documents; and
 - Sign off on all the documentation.
- 4.39 This officer also had responsibility for management of the office’s commercial and local government elections division. Due to the lack of resources, this person was not relieved from his day-to-day responsibilities.
- 4.40 It is also significant that for the previous redevelopment project for the 1999 election, the SEO committed a full time senior SEO manager, full time assistance from a permanent staff member as well as an officer seconded from the AEC.
- 4.41 This had an impact on both problems.

Index tables

- 4.42 The pre-count and count processes had been fully tested end to end however a full scale Legislative Council data entry test was not undertaken. The decision was made not to attempt to replicate the operation environment because to do so would involve:
- Production of 1.5 million sample ballot papers;
 - Sorting, counting and batching them;
 - Employment of 250 data entry operators; and
 - Pre-count and count processes.
- 4.43 This cost was estimated to be approximately \$1 million. Instead of doing this, they tested these processes by running the 1999 election data using the software. The following table shows the increase in volume of data between the 1999 election and the 2003 election:

	1999	2003
Electors	4.1 million	4.2 million
Votes cast	3.8 million	3.9 million
Candidates	264	284
Groups	80	15
Total formal	3.5 million	3.7 million
% voted Above the line	89.2%	92.9%
Ballot data papers entered	400,000	1.75 million

- 4.44 The increase in volume of data would have contributed to the deterioration of performance in the index tables.

- 4.45 In addition to running the 1999 election data, they should also have considered simulating the production of 1.5 million ballot paper data and running it through the pre-count and count processes.

Entry of non-preference data

- 4.46 The system testing and acceptance testing processes did not pick up the fact that the treatment of preferences marked outside squares on the ballot paper had been overlooked.
- 4.47 The data entry specification stated that the preference field would be populated by a numeric value. The functional specification referred to the entry of 'numeric preferences', plus 'x', '/' and '-' as the only values able to be data entered into the system.
- 4.48 Hansen Technologies were of the understanding that numeric preferences included zero and allowed for zero preferences when developing the data entry screen. It was not realised at the time that allowing the data entry of zeros would impact on the pre-counting and vote counting processes.
- 4.49 In addition, a decision was made to use a zero preference as a way to represent preferences marked outside the squares. This would ensure that the data entry and the report of the data entry reflected the way the ballot paper had been marked.
- 4.50 This was not strictly necessary, as these preferences were not used in the counting of votes. Even worse, the entry of zero values in the preference field caused problems with the count process by misrepresenting the value of some votes and causing a number of formal votes to prematurely exhaust.
- 4.51 The decision to use the 1999 election data as the operational test meant that this situation was not discovered because there was no ability to enter the zero in the previous version of the software.

PREVENTION OF PROBLEM RECURRENCE

- 4.52 The two problems will not recur in a future election because the following fixes are now in place:
- A process to re-create the index tables has been included into the pre-counting process. This will ensure that the index tables will be correctly optimised for the pre-counting and counting processes; and
 - The ballot paper data entry program has been modified to remove the ability to enter a single zero or multiple zeros.
- 4.53 In addition, the software development lifecycle methodology recommended in the next section should also be adopted.

SOFTWARE DEVELOPMENT LIFECYCLE

- 4.54 The material reviewed did not provide any information about the specific software development environment used. A general methodology is described below.

- 4.55 The software development life cycle is the overall process of developing information systems through a multi step process from investigation of initial requirements through analysis, design, implementation and maintenance.
- 4.56 The following steps in the process are highly recommended:

REQUIREMENTS	
Business requirements document	A high level definition of the requirements.
Request for quotation	If the project is to be outsourced, these steps are necessary.
Selection of contractor and contract sign-off	
Project Plan	The project plan documents the phases of the project with timelines and assigned responsibilities.
Functional specification	Defines functions and operation of the intended application. Includes an analysis of end-user information needs.
High level design specification	Describes desired features and operations in detail, including screen layouts, business rules, and process diagrams.
System Test specification	Documents all tests to test all the required functionality.

TESTING	
Unit Testing	Lowest level component, module or sub-program test. This is a stand-alone test, usually undertaken by the software engineer who developed it.
System Testing	Highest level of application functionality testing performed by a combined systems and user group on the completely assembled product.
Integration/Performance	Testing large-scale systems interface or interoperability testing. May include performance or load testing.
Acceptance/Production/Operational	Independent test performed by the users prior to accepting the delivered system.

PROJECT MANAGEMENT	
Project Meetings	Regular meetings to discuss all project related issues.
Status Reports	Reports prepared by the project manager to document the current status of the project.
Maintenance of issue log	An issue log that tracks all issues that have been raised and their resolution.
Review of issues	All issues need to be reviewed to assess their impact/urgency.
Software Version control	All versions of the software should be tracked to ensure that a previous version can be reinstated if there is a problem.
Regression Test	Comprehensive re-test of an entire system after a modification has been made.

4.57 The following should also be noted:

- Development of the project code takes place after the requirements phase and before testing commences;
- The functional specification is usually done before a high-level design specification;
- The client should always review and sign off on the business requirements document and functional specification documents; and
- The client should also be responsible for producing and managing the acceptance test phase. This should be completely independent of the developers of the system.

4.58 Figure 2 shows the steps followed in the 2003 election project:

Business requirements document	Prepared by CMG Admiral	√
Request for quotation		√
Selection of contractor and contract sign-off	SEO awards contract to Hansen Technologies	√
Project Plan	Developed by Hansen Technologies	√
Functional specification	Developed by Hansen Technologies Signed off by SEO project manager	√
High level design specification	Developed by Hansen Technologies Signed off by SEO project manager	√
System Test specification	Not stated who prepared this document	√
Audit of the system test specification	Review of functional specification and system test specification by CMG Admiral	√
Implementation/Development	Hansen Technologies	√
Unit Testing	Hansen Technologies	√
System Testing	Hansen Technologies	√
Acceptance Testing	Hansen Technologies with SEO resources	*
Integration Testing	End-to-end testing using test ballot papers Running the 1999 legislative council election result through the counting module	*
Project Meetings		√
Status Reports	Prepared and submitted by Hansen Technologies on a fortnightly basis	√
Maintenance of issue log	Maintained by Hansen Technologies	√
Review of issues	Review involved Hansen Technologies, CMG Admiral review team, SEO and its IT consultant	√
Software Version control		?

Figure 2 - Checklist of steps followed

The ‘*’ indicates areas which need to be improved in subsequent development projects.

- 4.59 The acceptance testing process needs to be managed independently of the developers, preferably, by the users. The users should work out all possible combinations of data that will exercise the functionality of the system. The expert user must be given sufficient time and resources to devote to this activity.
- 4.60 The integration testing process must ensure testing of all interfaces. The interface between the ballot entry system and the Legislative Council count and management system needed to be tested more exhaustively.

TECHNOLOGY AUDIT

- 4.61 In this context, the purpose of a technology audit would be to comment on the suitability of the technology adopted in the Legislative Council system. However, more information about the system would need to be provided.
- 4.62 No information has been provided about the type of hardware used for the server. In this context, the type of central processing unit, amount of memory and disk drives is needed.
- 4.63 In addition, the type of programming language used to build the software and components should be specified.
- 4.64 The technology audit is also dependent on the type of operating system used. Types of operating systems include Microsoft, Unix and Linux.
- 4.65 The database management system is responsible for the data in the database. Management of indexes is also largely dependent on the type of database management system.
- 4.66 The final thing required is the configuration of the computer server. One factor that could contribute to the problems was size of memory space available for the data and the index tables.

CONCLUSION

- 4.67 The problems encountered in the 2003 election were non-trivial and should have been picked up prior to the 2003 election. However, the methods adopted by the IT personnel to identify the problems and fix the problems followed standard industry practice. On the balance of probabilities, the Committee has no reason to believe that the problems had any impact on either the data or the outcome of the election.
- 4.68 In summary, there is sufficient evidence to support Mr Barry's assertion that:
- there were not enough checks and balances, not enough identification of risk and 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.¹⁶³
- 4.69 The Committee is however of the view that the SEO must manage future IT projects that are integral to the election process with more prudence ensuring that all risks are identified and minimised. The Committee considers that the steps identified by BMM in relation to the software development lifecycle should be adopted by the SEO for

¹⁶³ Transcript of evidence, Monday 6 June 2005, p. 60.

future IT projects. This will ensure that adequate testing of the system occurs before it is used. The Committee is of the view that this is particularly important given that BMM have identified that acceptance testing and integration testing are the two areas where the SEO need to improve in future IT projects.

RECOMMENDATION 32: That the SEO consider adopting the software development lifecycle methodology as outlined in paragraph 4.56.

Chapter Five - The voting system for the Legislative Council

INTRODUCTION

- 5.1 Part 2 of the Sixth Schedule of the *Constitution Act 1902* sets out the procedure for counting the votes for the Legislative Council (see Appendix Five). Members are elected under a proportional representation – single transferable vote [PR-STV] system. A PR-STV system is a combination of two sets of electoral principles:

The first element of PR-STV is the concept of proportional representation. Proportional representation [PR] is premised on the idea that the composition of members in parliament should reflect the approximate wishes of the voting public. It attempts to achieve this by lowering the threshold required to win a seat so as to ensure that political groups and candidates who represent minority views and opinions have increased opportunities to gain election to the legislature.

The second aspect of PR-STV is the notion of the single transferable vote [STV]. STV is a voting system intended to afford the voter the widest selection and choice when electing candidates, while simultaneously attempting to minimise the likelihood that their vote will be wasted. This principle is achieved by allowing the voter to pick more than one candidate listed on their ballot paper. If the individual's first choice of candidate accumulates more votes than is required for election or alternatively has little chance of winning due to a low vote, the voter's ballot paper is transferred to the continuing candidate listed as the next preference. In this way, PR-STV significantly improves the odds that the vote of an elector will contribute to the election of at least one of the winning candidates.¹⁶⁴

- 5.2 For the New South Wales Legislative Council, candidates need to obtain a quota (which is approximately 4.5% of the total formal votes cast) in order to be elected. The quota is determined by using a formula set out in Clause 7 of the Sixth Schedule, which is determined:

“...by dividing the total number of first preference votes for all candidates by 22 and by increasing the quotient so obtained (disregarding any remainder) by 1.”

i.e. Quota = [Total number of formal first preference votes ÷ (number to be elected + 1)] + 1

- 5.3 Candidates that receive first preference votes equal to or greater than this quota are elected. The quota figure remains the same for the whole count.
- 5.4 Any votes a candidate receives above this quota are known as surplus votes and are transferred to the remaining candidates in the order of preference indicated. The ballot papers transferred are selected at random.¹⁶⁵ The transfer value is generally less than 1 and is applied to the distributed votes using a formula set out in the Sixth Schedule:

Transfer value = Number of elected candidate's surplus votes ÷ Number of candidate's first preference votes excluding the number of exhausted ballot papers

¹⁶⁴ Miragliotta, Narelle, *Determining the Result: Transferring Surplus Votes in the Western Australia Legislative Council*, Western Australian Electoral Commission, July 2002, pp. 1 – 2.

¹⁶⁵ Clause 10(f) of the Sixth Schedule of the *Constitution Act 1902*.

- 5.5 Ballot papers that do not have a next available preference for any of the candidates remaining in the count are exhausted.
- 5.6 If all 21 members have not been elected and there are no surplus votes to transfer, the ballot papers of the candidate with the lowest number of votes are transferred according to the next available preference indicated.
- 5.7 New South Wales is the only state in Australia to random sample votes rather than count all preferences. Random sampling is used as a method of simplification to make the count for the Legislative Council easier¹⁶⁶ and arose due to the fact that the system originally required a manual count. As the SEO noted in its submission:
- The Sixth Schedule of the *Constitution Act* which deals with the process of counting votes is complex. The legislation was written when ballot papers were counted manually and prior to the introduction of list voting, or voting above the line.¹⁶⁷
- 5.8 This Chapter considers the current method of counting and transferring surplus votes for the Legislative Council, the difficulties associated with having the provisions entrenched in the *Constitution Act 1902* and considers whether an alternative method would be more appropriate. It also discusses a number of voting procedures that were raised as part of the inquiry and considers the changes to the Legislative Council voting system that applied for the first time at the 2003 periodic election.

CONSTITUTIONAL PROVISIONS

- 5.9 As noted, Part 2 of the Sixth Schedule of the *Constitution Act 1902* sets out how votes for the Legislative Council are to be counted and transferred. The provisions were enacted in 1978¹⁶⁸ in conjunction with amendments to allow for members of the Legislative Council to be elected directly by the people. As these amendments affected the procedures for the election to the Legislative Council they needed to be approved by the electors at a referendum prior to enactment due to the provisions of section 7A of the *Constitution Act 1902*. Subsections (1) and (2) provide:
- (1) The Legislative Council shall not be abolished or dissolved, nor shall: except in the manner provided by this section.
- (a) its powers be altered,
 - (b) section 11A, Division 2 of Part 3 (sections 22G, 22H, 22I and 22J excepted), the Sixth Schedule or this section be expressly or impliedly repealed or amended,
 - (c) any provision with respect to the persons capable of being elected or of sitting and voting as Members of either House of Parliament be enacted, or
 - (d) any provision with respect to the circumstances in which the seat of a Member of either House of Parliament becomes vacant be enacted,
- (2) A Bill for any purpose within subsection (1) shall not be presented to the Governor for His Majesty's assent until the Bill has been approved by the electors in accordance with this section.

¹⁶⁶ See Green, Antony, *Prospects for the 2003 Legislative Council Election*, NSW Parliamentary Library Background Paper 3/03, February 2003 for further information on the counting procedures and calculations used in the count.

¹⁶⁷ State Electoral Office, Submission to the Inquiry, p. 23.

¹⁶⁸ *Constitution and Parliamentary Electorates and Elections (Amendment) Act 1978*

- 5.10 The reason a referendum was required was because the legislation changed the way that the members of the Legislative Council were elected. However, as the method used for the counting and transferring of votes was included in the legislation and consequently enacted in the Sixth Schedule, the method for the counting of votes cannot be changed without the approval of the electors at a referendum.
- 5.11 It was put to the Committee that there is no need for the administrative detail regarding the procedure used for the counting and transferring of votes to be included in the Sixth Schedule and thereby entrenched. Rather, this detail should be transferred to the *Parliamentary Electorates and Elections Act 1912* leaving only the general description. Antony Green commented in his submission:

Until 1933, the NSW Legislative Council was an appointed body. Following a referendum in 1933, the Council became an indirectly elected body, with a constituency consisting of the Legislative Assembly and continuing members of the Legislative Council. Direct election of the Legislative Council was approved by a referendum in 1978, the first election for a third of the chamber taking place later the same year.

As with several other aspects of the Legislative Council, the decision was made to entrench provisions concerning the newly re-formed Council in the Constitution Act. This included the insertion and entrenchment of Schedule Six, which sets out the detail of how to conduct the count at a Legislative Council election.

The problem with Schedule Six is that too much detail has been entrenched. Rather than entrench the basic detail, such as election for the state as a whole, optional preferential voting, the grouping of candidates and a general description of the counting system, a full recipe book of procedures has been entrenched.

Oddly, the politically significant introduction of group ticket voting was possible without a referendum, as it only changed the ballot paper and the way preferences were implied, not the actual counting system. Yet other administrative procedures cannot be changed as they are entrenched in Schedule Six.¹⁶⁹

- 5.12 The Committee raised the issue with Mr Green when he appeared before it to give evidence. Mr Green commented on the Sixth Schedule noting:

...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 would 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 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

¹⁶⁹ Antony Green, Submission to the Inquiry, p. 6.

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.¹⁷⁰

- 5.13 Other jurisdictions that elect members under a PR-STV system do not have such details entrenched within their Constitution Acts. For example, in relation to the Australian Senate, the Constitution of Australia notes that senators are to be chosen directly by the people of the State for whom the senators represent and provides that “The Parliament of the Commonwealth may make laws prescribing the method of choosing senators, but so that the method shall be uniform for all the States...”¹⁷¹ However, no mention is made of the method that will be used to count and transfer votes for the election of senators in the Constitution.
- 5.14 In Ireland, a PR-STV system is used to elect members to the Dáil Éireann, the lower house of Parliament. The Constitution of Ireland simply notes that “The members shall be elected on the system of proportional representation by means of the single transferable vote.”¹⁷² There are no details as to how the surplus votes will be transferred within the Constitution.

Difficulties in having Schedule 6 of the *Constitution Act 1902* entrenched

- 5.15 As noted by virtue of section 7A of the *Constitution Act 1902* the provisions in the Sixth Schedule in relation to the method of counting and transferring votes for the Legislative Council are entrenched and cannot be amended without a referendum. This has resulted in a number of difficulties. Antony Green comments in his submission:

The two most obvious problems created by Schedule Six concern the death of a candidate, and the use of random sampling. In Electoral Acts in other jurisdictions, a deceased candidate is excluded before the rest of the count continues as normal. In NSW, no provision is made for this in Schedule Six, and the prescriptive nature of the Schedule makes it impossible for normal legislation to work around the problem.

With random sampling, the use of computers to conduct the count overcomes the complex manual procedures made simpler by random sampling but random sampling itself cannot be abandoned in the computer system because Schedule Six mandates its use. Tasmania has managed to conduct similar counts by hand without random sampling for ninety years, yet NSW has introduced computerised counting that despite the accuracy of the count, cannot guarantee the same result twice because of the use of random sampling. Random sampling remains in place despite having been abandoned as too inaccurate for the Senate elections twenty years ago.¹⁷³

- 5.16 The Committee asked Mr Green to elaborate on the difficulties surrounding the death of a candidate when he appeared before the Committee to give evidence:

The Hon. DON 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

¹⁷⁰ Transcript of evidence, Monday 6 June 2005, pp. 21 – 22.

¹⁷¹ See sections 7 and 9 of the *Commonwealth of Australian Constitution Act*

¹⁷² See Article 16.2.5^o of the Irish Constitution.

¹⁷³ Antony Green, Submission to the Inquiry, pp. 6 – 7.

The Hon. DON 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.¹⁷⁴

- 5.17 The Committee notes that it is important for certain aspects of the electoral system in New South Wales to be entrenched under the *Constitution Act 1902* to ensure that the Parliament cannot simply change the way members are elected without the consent of the majority of electors. However, the Committee is of the view that the purpose of entrenching the provisions in relation to electing the Legislative Council in the Sixth Schedule were for the most part in order to ensure that members of the Legislative Council are to be elected directly by the people. This is reflected in the comments made by the then Premier, Neville Wran, when he introduced the amendments to the *Constitution Act 1902* to the Legislative Assembly where no mention at all was made in relation to the method for counting and transferring of votes.¹⁷⁵
- 5.18 Given this, the Committee sees no reason why the detailed administrative procedures in relation to how votes are counted and transferred should remain entrenched and is of the view that a referendum should be held to remove Part 2 of the Sixth Schedule from the *Constitution Act 1902* and transfer the provisions to the *Parliamentary Electorates and Elections Act 1912* where they can then be amended by the normal legislative process. This would then allow for a provision in relation to the death of a candidate to be included in the *Parliamentary Electorates and Elections Act 1912* to exclude the candidate and distribute the preferences.

RECOMMENDATION 33: That a referendum be held with a view to transferring Part 2 of the Sixth Schedule of the *Constitution Act 1902* to the *Parliamentary Electorates and Elections Act 1912*.

Legal requirements regarding any proposed referendum

- 5.19 Any proposed changes to the Sixth Schedule of the *Constitution Act 1902* must be agreed to by the majority of electors at a referendum due to the entrenchment of the Sixth Schedule under section 7A of the *Constitution Act 1902*. The requirement for

¹⁷⁴ Transcript of evidence, Monday 6 June 2005, p. 33.

¹⁷⁵ See New South Wales Legislative Assembly, Parliamentary Debates, 2 June 1977, pp. 6533 - 6550

the Legislature to comply with the manner and form requirements specified in section 7A of the Act derive from section 5 of the *Colonial Laws Validity Act 1865* (Imp.). This Act required manner and form procedures to be complied with in the case of laws “respecting the constitution, powers and procedures” of the representative legislature in question.

- 5.20 The Crown Solicitor advised the Committee that any proposed law respecting the system of voting, which intends to repeal or amend the Sixth Schedule of the *Constitution Act 1902* would be a law respecting the “constitution” of the Legislature. Reference is made to the decision in *Attorney-General (WA) v Marquet* (2003) 78 ALJR 105 where the majority of the High Court held that: “At least to some extent the ‘constitution’ of the Parliament extends to features which go to give it, and its Houses, a representative character.” Given this, any change to the provisions of the Sixth Schedule would need to follow the procedure outlined in section 7A of the *Constitution Act 1902* (i.e. be approved by the electors at a referendum).
- 5.21 In addition to complying with the requirement for a referendum, any bill that is proposed to be submitted to the electors at a referendum proposing changes to the procedures for election to the Legislative Council must be passed by both Houses of Parliament at least two months prior to the referendum in accordance with section 7A(3) of the *Constitution Act 1902*. The Crown Solicitor has noted that should this section not be complied with that it is unlikely that the Supreme Court would intervene until the law-making process has been completed (i.e. after the bill has received assent). However, following the completion of the legislative process the validity of an Act is justiciable and any bill that did not comply with section 7A(3) would be deemed invalid.
- 5.22 Legislation also needs to be passed by the Parliament providing for the holding of a referendum on any proposed bill regarding the counting of votes for the Legislative Council. The Act providing for the referendum should specify the day for the referendum as the day named for the taking of the poll for the next general election of the Members of the Legislative Assembly held after the commencement of the Act. This is what occurred in relation to a bill submitted to the electors at the 1991 general election in relation to reducing the number of Members in the Legislative Council and their term of office. The Court of Appeal in *Bignold v Dickson* (1991) 23 NSWLR 683 held that this was a valid appointment of the day by the Legislature as section 7A(3) of the *Constitution Act 1902* does not require the specification of a particular date.

THE COUNTING OF VOTES FOR THE LEGISLATIVE COUNCIL

Is the current method adequate?

- 5.23 If a referendum is agreed to removing the provisions that outline the method in which votes are counted and transferred from the entrenched provisions under the *Constitution Act 1902*, consideration needs to be given to whether the current method used should be replaced. New South Wales was the first State to adopt STV system for an upper house election in Australia. The system adopted was that used by the Senate at the time. Under the system only those votes that an elected candidate has received over and above the quota required are considered surplus and transferred. These surplus votes are transferred at their full value and based solely on the next preference

marked on the ballot paper. Those ballot papers that are actually transferred are randomly selected, which is the reason why the method used to transfer the votes in New South Wales is referred to as random selection or random sampling. Miragliotta describes how the system works in more detail:

A candidate is elected with a surplus following a transfer of preferences from other elected and excluded contestants. In order to determine how many ballot papers each of the remaining candidates should receive, the elected candidate's total number of surplus votes is divided by the number of ballot papers in the last parcel received by the candidate at the point at which he or she was elected. The resulting figure is multiplied by the number of ballot papers in the last bundle of votes credited to the elected candidate for each continuing contestant listed as the next preference. A quantity of ballot papers equal to this number is then drawn at random from the last parcel of votes and assigned to the relevant continuing candidate at full value.¹⁷⁶

5.24 There are advantages and disadvantages in relation to the random selection method. As previously noted, the method was adopted at a time when ballot papers were counted manually, which is one of the advantages of the method. However, there are concerns that the method introduces an element of chance into the system as only a random selection of ballot papers are transferred. In addition, those ballot papers that form part of the quota to elect a candidate are deemed to have exhausted and their preferences are not transferred. Miragliotta outlines the advantages and disadvantages of the random selection method:

The Advantages of the Random Selection Method

- It results in the transfer of the correct number of ballot papers to each of the continuing candidates. The method ensures that the surplus votes of an elected candidate are transferred in due proportion to the remaining candidates for whom a subsequent preference has been expressed.
- The method produces both an accurate and consistent electoral outcome if the ballot papers selected for transfer are not later used in subsequent transfers.
- The method can be performed without sophisticated computer programs. This means that results are easy to verify manually.

The Disadvantages of the Random Selection Method

- It can introduce an element of chance to the election outcome if the transfer of papers that have been selected at random enables another candidate to attain a surplus. Because these ballot papers have been chosen at random there is the possibility that the further preferences shown on them may not be the same as those on any other set of papers chosen in the same way. This can create a significant problem if the vote between two candidates is close and a recount is required. This leads to the possibility that a different set of results could be obtained in a countback.
- There is the slight possibility that under certain conditions some ballot papers could increase in value. This could occur if the same ballot paper was transferred more than once during the course of the count.
- The method considers only the last parcel of ballot papers received by the elected candidate, at the point at which he or she was elected, eligible for transfer. Earlier parcels of ballot papers credited to an elected candidate are

¹⁷⁶ Miragliotta, Narelle, *Op. Cit.*, p. 20.

regarded as having exhausted their value, while the last packet of ballot papers that was transferred to the contestant is deemed to be surplus. In doing so, this practice discriminates against those voters whose ballot papers are transferred to the elected candidate ahead of his or her attaining a quota. This delivers an unfair electoral bonus to those ballot papers that give immediate rise to the elected candidate's surplus.¹⁷⁷

- 5.25 Farrell and McAllister also refer to the element of chance that the method creates noting that random sampling can have important implications when the results between two candidates are very close. They argue:

Depending on which ballot papers were selected from the pile at an earlier stage in the counting process, in a close finish the fate of a candidate could be sealed by the particular pattern of preferences that predominated in those ballot papers. In other words, there are random effects involved in the counting process. While some have suggested that the prospect of this resulting in the incorrect election of a candidate is extremely unlikely, statistical analysis has demonstrated conclusively that, in fact, this procedure of transferring surpluses permits an 'element of arbitrariness...that...can[not] be ignored with impunity'.¹⁷⁸

- 5.26 Miragliotta also notes that the probability of the ballot papers selected at random to be transferred being unrepresentative is extremely low:

It is generally acknowledged that it is improbable that a grossly unrepresentative selection of ballots would be selected. In 1981, Fischer calculated that the probability that the winning margin would be small enough to have to worry about the sampling problem is estimated to be 2.1 percent. He claims that if the practice continued to be used, the probability that the wrong candidate would be elected in the future is estimated to occur in one state in Australia on about .22 percent of occasions that a Senate election is held Australia wide. The high number of voters who vote in accordance with the instruction of the party that they indicated a first preference for adds credence to this view.¹⁷⁹

- 5.27 The issue of whether random sampling should be abandoned as the method for transferring surplus votes for the Legislative Council of New South Wales was a major issue that was raised throughout the inquiry process. As previously noted, Antony Green argued that with the use of computers for counting the votes for the Legislative Council that random sampling should be abolished. This view was also expressed by a number of other stakeholders who presented their views to the Committee as part of the inquiry process. The NSW Branch of the Proportional Representation Society of Australia [PRS] argued in its submission:

Random sampling of ballot papers, rather than counting in full the distribution of preferences as used in Tasmania and the ACT...is an outdated and unnecessarily flawed process in this age of computers and there is no valid reason why all votes should not be counted. Not only would counting all votes ensure that preference votes are correctly allocated, but in the event of a recount of votes, selection of different parcels of randomly sampled votes could not produce a different election outcome.¹⁸⁰

¹⁷⁷ Ibid, pp. 20 – 21.

¹⁷⁸ See Farrell, D.M., and I. McAllister, 'The 1983 Change in the Surplus Vote Transfer Procedures for the Australian Senate and its Consequences for the Single Transferable Vote' in *Australian Journal of Political Science*, Vol. 38, No. 3, November, pp. 479 – 491, p. 482.

¹⁷⁹ Miragliotta, Narelle, *Op. Cit.*, footnote 19, p. 21.

¹⁸⁰ NSW Branch, Proportional Representation Society of Australia, Submission to the Inquiry, p. 4.

5.28 A number of political parties that gave evidence to the Committee indicated that they would support any moves to abolish the random sampling method and do a full distribution of votes. The Nationals noted that abolishing random sampling would provide people with greater confidence in the electoral process:

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.¹⁸¹

5.29 The Greens argued that in the age of computers that random sampling should be abolished and that there should be a full count of the votes for the Legislative Council:

The Hon. DON HARWIN: A random sampling occurs in the counting of the Legislative Council ballot. Are you familiar with that?

Mr ASH: I am. It is complex, but I have some understanding of it.

The Hon. DON HARWIN: There is a hang-over as a result of the entrenchment of the provisions. Do you have a view on that?

Mr ASH: In the age of computers, the count should be done exactly rather than through a random sampling, where there is a small scope for error. We favour, if it could be managed logistically, the use of computers by the SEO and the scrapping of random sampling. In that way we would have a real count.¹⁸²

5.30 On a related note, the Republic of Ireland currently use the random selection method for electing members to the Dáil Éireann, the lower house of Parliament. Consideration has been given to abolishing the random selection method and moving to a system where a full distribution of preferences occurs under fractional voting as part of the moves to electronic voting. However, the electronic voting project has stalled and is currently being considered by the Electronic Voting Commission.

5.31 The Committee is of the view that if a referendum is agreed to removing the entrenched provisions in the *Constitution Act 1902* relating to the method for the counting and transferring of votes for the Legislative Council that random sampling should be abandoned as the method for the counting the votes. The Committee considers that random sampling is outdated in the age of computers and that whilst the statistical error of an unrepresentative sample is low that it would be preferable if a full distribution of the preferences from all votes was conducted rather than a random selection of the last bundle of votes a candidate receives.

5.32 The Committee also notes that the random sampling method was abolished for Senate elections in 1984 following a recommendation of the Joint Select Committee on Electoral Reform, which had concluded that there were 'defects' with the random

¹⁸¹ Transcript of evidence, Monday 6 June 2005, p. 5.

¹⁸² Transcript of evidence, Monday 23 May 2005, p. 11.

selection system. The Committee supports the abolition of random sampling as the method for counting and transferring votes for the Legislative Council.

RECOMMENDATION 34: That the issue of abolishing random sampling as the method for the counting and transferring of votes for the Legislative Council be considered by the government as part of the review of the Parliamentary Electorates and Elections Act 1912.

Alternate methods for transferring surplus votes

5.33 The Committee was advised about alternate methods for counting the votes for the Legislative Council as part of the inquiry. A number of submissions commented on alternate methods. Antony Green considered the different approaches that were used in Australian jurisdictions. He noted in his submission:

There are two main systems in use in Australia. Until 1984, all Australian parliaments used what can be called the Gregory method, where the last bundle of votes received is examined to determine preferences. For candidates elected at the first count, this bundle was all primary votes. For later counts, the last bundle was the votes received by a candidate at a count that put the candidate over a quota. This means that candidates elected at a later count never have the preferences of their primary votes examined.

The new Senate system adopted in 1984, and since introduced in South Australia, Western Australia and Victoria, uses a different system dubbed the 'Inclusive Gregory' method. This looks at all votes possessed by a candidate at the point of election, not just the last bundle received.¹⁸³

5.34 The Inclusive Gregory method for counting and transferring votes takes into consideration all the votes of a candidate elected with an excess of the quota when transferring surplus votes, rather than just the last bundle credited to the elected candidate. The method assumes that all ballot papers have an equal right to affect the make-up of the surplus. Miragliotta describes how the method works:

...the Inclusive Gregory method does not regard surplus ballots not contained in the last parcel as having exhausted their total value. For this reason, all the ballot papers of a candidate elected due to a transfer are included when calculating the transfer value. The transfer value is derived by dividing the elected candidate's surplus by the total number of ballot papers received by that candidate. This is multiplied by the number of votes for each continuing candidate for whom a second preference is indicated to determine the number of votes to be transferred.¹⁸⁴

5.35 The main advantage of the Inclusive Gregory method is that it guarantees that "all surplus ballot papers, and not just the last parcel received, are considered when calculating the transfer value".¹⁸⁵ However the method is not without its flaws. Miragliotta notes a number of disadvantages with the method:

- There is the possibility that under certain circumstances the vote values of some ballot papers transferred previously in the count will be passed on at a higher value than that at which they were received. This seems most likely to occur where the elected candidate's vote is composed of a number of parcels of ballot papers transferred under different transfer values. If the transfer values of some of these ballot papers are relatively small and the ratio of the elected candidate's

¹⁸³ Antony Green, Submission to the Inquiry, p. 9.

¹⁸⁴ Miragliotta, Narelle, *Op. Cit.*, p. 23.

¹⁸⁵ *Ibid*, p. 23.

surplus to his or her total number of ballot papers is 10 percent or greater, there is a strong possibility that some of these smaller parcels of ballot papers will rise in value. The increase in the value of some ballot papers, under these conditions, runs counter to the concept of the *single* transferable vote.

- There is a risk that any large parcel of ballot papers transferred at a pre-existing transfer value can dominate the elected candidate's surplus at the expense of smaller parcels of ballot papers credited at full value. This can occur because transfer values are calculated not on the basis of the elected candidate's total number of votes but on the total number of ballot papers received.¹⁸⁶

5.36 Farrell and McAllister also comment on the problem that the Inclusive Gregory method has with the value of ballot papers increasing. They note:

...under the inclusive Gregory method, it is possible for a ballot paper's TV [transfer value] to increase in later counts, thereby attaching undue weight to some ballot papers and insufficient weight to others...such an anomaly brings with it the danger of electing the wrong candidate.¹⁸⁷

5.37 Mr Green referred to this 'technical fault' in the Inclusive Gregory method whereby the value of the votes can increase during the distribution of preferences. Given this fault, Mr Green is of the view that if the Committee is of a mind to recommend the adoption of the same system used by the Senate for the counting and transferring of votes for the Legislative Council that it should be modified to ensure that the value of votes does not increase. This system is known as the 'Weighted Inclusive Gregory' method. He commented that the weighted inclusive Gregory method is the fairest way to transfer surplus votes.¹⁸⁸

5.38 Miragliotta describes how the method works:

The Weighted Inclusive Gregory system does not treat all of the ballot papers of a candidate elected with a surplus in the same way. In the case of an elected candidate's first preference votes and the ballot papers received from excluded candidates, a transfer value is obtained by dividing the elected candidate's surplus by his or her total vote. The resulting transfer value is then applied to both the elected contestant's first preference votes and the ballot papers received from excluded candidates. However, votes that are transferred to the elected candidate at less than full value, are dealt with differently. The transfer value is calculated by dividing the surplus of the elected candidate by the elected candidate's total vote and then multiplied by the fractional value at which the transferred vote was received. The resulting fraction is then applied to those votes for which a separate transfer value has been calculated.¹⁸⁹

5.39 The counting process is much more complex than the calculations that are conducted under the Inclusive Gregory method and as such requires the assistance of computers. However, it has been argued by some that given the shift towards the use of computers to count votes in a number of jurisdictions that the weighted inclusive Gregory method should be given serious consideration.¹⁹⁰

5.40 The PRS also recommended that the Committee consider adopting the 'Weighted Inclusive Gregory' method for counting and transferring votes for the Legislative

¹⁸⁶ Ibid, pp. 23 – 24.

¹⁸⁷ Farrell, D.M. and I. McAllister, *Op. Cit.*, p. 484.

¹⁸⁸ See Transcript of evidence, Monday 6 June 2005, pp. 28 – 29.

¹⁸⁹ Miragliotta, Narelle, *Op. Cit.*, p. 24.

¹⁹⁰ Farrell, D.M. and I. McAllister, *Op. Cit.*, p. 485.

Council. The PRS argued in their submission that the use of this method for the Legislative Council “would prevent ballot-papers increasing in value during a scrutiny.”¹⁹¹

- 5.41 John Webber, Chairman of the PRS, commented on the advantages of replacing the current method of random selection with the Weighted Inclusive Gregory method when he appeared before the Committee:

CHAIR: In the your submission you noted that consideration should be given to replacing the random sampling with the weighted, inclusive Gregory method for counting of votes in the Legislative Council. Could you outline some of the benefits that would result from replacing random sampling with that method?

Mr WEBBER: If you look at appendix A, which you are no doubt familiar with, we have a quota of votes and then there is a surplus. That surplus of votes coming to a particular candidate generally comes from a number of other candidates who also have a surplus. The candidate that was not elected initially gets a surplus number of votes from a range of other candidates, from whatever source, within that party or from some other group, and that is fairly common.

The problem with the current system is that all those votes that come to that candidate, whence ever they come from, are considered to be at the same value. So when you are working out the transfer value to go to the next candidate, you divide as if they are all of the same value that came to them. If you look at the example in appendix A, where it talks about a quota of 50,000, where preferences are transferred between candidates, you get to the stage where one particular candidate, Jones, with 35,000 first preferences, receives 100,000 ballot papers with a transfer value of point one from someone called Costa, who was elected. Finally, he also gets 25,000 ballot papers at full value when another candidate, Perez, was excluded. At that point Jones has progressed with a total of 70,000 votes with a surplus of 20,000.

Under the definition of transfer value, the value for each of the ballot papers helping to elect Jones is 20,000 divided by 116,000, which is 0.125. The 10,000 papers that were worth 10,000 when received by Costa are now worth 12,500. This can go up in value as a result of helping to elect someone. That is the concern with the way the counting works under that system. It is a technical matter that can readily be overcome by allowing the votes to be counted and multiplied by the right proportion, in effect providing the right proportionate value of all the votes coming to a continuing candidate. In that way the values that get to the continuing candidate are the right ones to help that candidate collect a quota, or in turn they will pass to another continuing candidate.¹⁹²

- 5.42 Consideration was given to adopting the method for counting and transferring the votes for the Western Australian Legislative Council following concerns that that the wrong candidate had been elected in the Mining and Pastoral region of Western Australia at the 2001 election. Legislation was introduced into the Western Australian Parliament by the Government in 2003 to change the system of counting and transferring surplus votes for the Legislative Council from the Inclusive Gregory method to the Weighted Inclusive Gregory method.¹⁹³ However, this bill lapsed in 2005 prior to the General Election and similar legislation has not been introduced in the new Parliament.

¹⁹¹ NSW Branch, proportional Representation Society, Submission to the Inquiry, p. 4.

¹⁹² Transcript of evidence, Monday 23 May 2005, p. 31.

¹⁹³ *Electoral and Constitution Amendment Bill*.

- 5.43 The Western Australian Electoral Commissioner did note that whilst the Inclusive Gregory method does have an anomaly whereby some ballot papers can increase in value under certain conditions, the small increase that occurred in the Mining and Pastoral region had no impact on the outcome.¹⁹⁴
- 5.44 The Committee considers that there is a need to adopt a new method for the counting and transferring of votes for the Legislative Council in New South Wales. The Inclusive Gregory method is used to transfer votes for the Senate and the Legislative Councils for South Australia, Victoria and Western Australia. There have been concerns expressed that the method is technically flawed in that some of the ballot papers that are transferred can increase in value to be worth more than one vote and can result in the election of the wrong candidate in those election that are very close. A number of election observers have recommended that consideration should be given to adopting the Weighted Inclusive Gregory system, which will remove this anomaly.
- 5.45 The Committee is of the view that at a minimum the system used to count the votes for the Senate should be adopted if random sampling is to be replaced. Consideration should also be given to adopting the Weighted Inclusive Gregory method for the transferring of votes for the Legislative Council. Whilst, the system may be more complex for voters to understand at least they can be confident that all votes are equal and that a full distribution of preferences is being conducted. The Committee considers that if a new system for the counting and transferring of votes for the Legislative Council is to be adopted that it would be appropriate to adopt a system that does not have anomalies, no matter how small such anomalies may be.

Logistical issues with changing the method of counting the votes for the 2007 election

- 5.46 The view was expressed to the Committee that if a referendum was held in conjunction with the 2007 NSW election and is agreed to in relation to removing the entrenched provisions of Part 2 of the Sixth Schedule of the *Constitution Act 1902* that a new method of counting should apply at that election. Antony Green suggested that the Committee obtain legal advice “as to whether any change at a referendum held in conjunction with the 2007 election can also be used as a counting procedure for the 2007 Legislative Council election.”¹⁹⁵
- 5.47 The Committee received advice from the Crown Solicitor that it is legally possible for any changes agreed to at a referendum held in conjunction with the 2007 State Election in relation to the counting procedure for votes for the Legislative Council to be applicable to that election. However, the Crown Solicitor noted that there may be practical difficulties involved with changing the counting procedure due to the entrenched provisions in the Sixth Schedule of the *Constitution Act 1902* requiring the Electoral Commissioner, as the Council returning officer, to take certain steps at the close of the poll and then take other sequential steps. For instance, Section 129B of the *Parliamentary Electorates and Elections Act 1912* provides that “as soon as practicable after the close of the poll” for a periodic Council election the returning officer for each district shall, having opened the ballot-box, proceed to count the

¹⁹⁴ See comments of Dr K.W. Evans, Electoral Commissioner of Western Australia, in Miragliotta, Narelle, *Op. Cit.*, p. iii.

¹⁹⁵ Antony Green, Submission to the Inquiry, p. 7.

number of votes recorded for each candidate, and section 129G provides that the Electoral Commissioner shall, “as soon as practicable after the close of the poll” ascertain the result of the election in accordance with the Sixth Schedule of the *Constitution Act 1902*.

5.48 Clause 6 of Part 2 of the Sixth Schedule directs the Electoral Commissioner to ascertain the total number of votes recorded for each candidate and a number of other things “at the close of the poll”. It is argued that unless any bill that is approved by the electors is assented to and commences quickly after the general election that the counting of the votes would necessarily commence under the existing manner pursuant to obligations imposed by the *Constitution Act 1902* and the *Parliamentary Electorates and Elections Act 1912*.

5.49 The Crown Solicitor does consider that the provisions of the *Parliamentary Electorates and Elections Act 1912* may be overcome “either by legislation in advance or by an argument, perhaps, that it would not be ‘practicable’ in the circumstances of the particular referendum and a general election to do the things which [the Act] require before the commencement of the approved bill.” However, it is noted that legislation in advance cannot overcome the provisions in the Sixth Schedule due to the need to follow manner and form provisions specified in the *Constitution Act 1902* (i.e. a referendum).

5.50 The Committee considered the fact that at the 1991 general election the electors approved a bill at a referendum to reduce the number of members elected to the Legislative Council. However, whilst the bill had been approved by the electors at the time of the general election the *Constitution (Legislative Council) Amendment Act 1991*, which reduced the number of members for the Legislative Council, did not commence until 1 July 1991 and as such did not technically apply at the 1991 election. The Crown Solicitor commented:

Strictly speaking, nothing in the *Amendment Act* applied to the election in the sense of affecting how the election was conducted. The reduction in the number of members of the Legislative Council occurred on 1 July 1991 after the general election as a consequence of the voters having approved the *Constitution (Legislative Council) Amendment Bill* at the referendum on the day of the general election.

5.51 The Electoral Commissioner and representatives of the SEO also indicated that there would be a number of difficulties associated with holding a referendum on changing the method for the counting of the votes for the Legislative Council at the 2007 general election and if approved then using the new method for counting the votes for that election. It was commented:

The Hon. DON 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. DON 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. DON 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.¹⁹⁶

5.52 The SEO provided the Committee with further information on the practical issues that could arise if a referendum was held concurrently with the 2007 general election noting:

Issues will depend on what changes are to be made and the wording of the referendum question. Will it be the intention to dispense with the Sixth Schedule of the NSW Constitution entirely and adopt the Senate system in its entirety; or amend the Sixth Schedule where it refers to random selection and replace with provisions relating to the Inclusive Gregory Method or Weighted Inclusive Gregory Method? Either way, two vote counting systems would need to be ready to use, depending on the referendum result. One would be the current, the Sixth Schedule based software; the other being either a newly developed application or an adaptation of the system of another administration.

No other administration has ATL ('above the line') preferential voting and NSW informality rules are unique. Both would necessitate extensive modification to any adopted software. Based on past experience, the development/testing costs of amended/new software could be significant. Should the referendum fail, that expense would be wasted.

Operationally, there may need to be new procedures for polling place staff and returning officers in regard to sorting, counting, packing etc of ballot papers depending on what the referendum asks. Returning Officer and polling place manager training could be affected.

Other issues to consider:

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Transcript of evidence, Monday 6 June 2005, pp. 57 – 58.

- how would parties/candidates prepare how-to-votes, not knowing how votes were to be counted?
- voters would have to give preferences not knowing how votes could be counted; and
- the election result may be open to challenge.¹⁹⁷

5.53 Whilst, the Committee considers that random sampling should be abolished there are a number of logistical problems in relation to the suggestion that a new method for counting and transferring the votes should apply at the 2007 election. For example, the SEO has noted that it would need to have two different software systems ready to go and that the costs involved in the development of new software or amendment of existing software could be quite significant.

5.54 In addition, the Committee is conscious of the fact that the SEO need to ensure that returning officers and polling officials are aware of the procedures that need to be followed as part of the election process and that any proposal for changes to be applicable at the 2007 election in relation to the count for the Legislative Council could cause significant difficulties for this process.

5.55 The Committee is of the view that changing the method for counting and transferring votes for the Legislative Council needs to be a two-step process. First, a referendum needs to be approved by the electors to transfer the provisions of Part 2 of the Sixth Schedule of the *Constitution Act 1902* to the *Parliamentary Electorates and Elections Act 1912*. Second, if the referendum is approved, that a new method of counting and transferring the votes be incorporated into the *Parliamentary Electorates and Elections Act 1912*. Whilst, it is legally possible for these changes to come into place at the 2007 election, the logistical problems outlined above do not make the idea feasible.

5.56 Furthermore, the Committee has noted that at a minimum the Inclusive Gregory method, which is used to count votes for the Senate, be adopted but that consideration also be given to adopting the Weighted Inclusive Gregory method for transferring surplus votes for the Legislative Council of New South Wales. Adopting either one of these methods will require new software to be developed or existing software to be modified so that it takes into consideration the peculiarities of the voting system used in New South Wales such as preferential above-the-line voting for the Legislative Council. The Committee is of the view that if a new method is not adopted until the 2011 general election that this will provide ample time for the SEO to develop and test the software that will be required under whichever system is decided on to count and transfer the votes for the Legislative Council.

CHANGES TO THE ELECTORAL SYSTEM THAT APPLIED AT THE 2003 NSW ELECTION

5.57 Following the March 1999 general election there was widespread criticism of the large ballot paper for the Legislative Council and the allocation of preferences under group voting. Consequently, amendments were made to the *Parliamentary Electorates and Elections Act 1912* regarding the registration of political parties and group voting for the Legislative Council.

¹⁹⁷ State Electoral Office, Responses to questions on notice from the hearing held on 6 June 2005, p. 2.

- 5.58 The amendments made in relation to the registration of political parties were introduced to tighten the minimum requirements to ensure that only genuine political parties with some level of community support may contest elections. The new provisions require that political parties must have at least 750 members on the electoral roll in New South Wales and have a written constitution setting out the platform and objective of the party. The new provisions also introduced measures to alleviate concerns that the same people were registering a number of parties by providing that the same member cannot be relied upon by more than one party to qualify or continue to qualify for registration.¹⁹⁸ In addition, a party cannot be registered after the issue of the writ for a general or by-election until after the day of election¹⁹⁹ and parties must maintain the minimum number of members for a period of 12 months following registration before it can contest an election.²⁰⁰
- 5.59 The new provisions regarding the registration of political parties appears to be supported by the political parties. For instance, the Greens noted that they supported the new requirements for registration of political parties arguing that it has brought more honesty into the system and helped to ensure that the seats in the Legislative Council more accurately reflect the percentage of votes cast:
- The Hon. AMANDA FAZIO:** You support the changes that were introduced after 1999 where parties have to be registered 12 months out, so that there is a greater check on people who are claiming to be members and that someone who signed a petition cannot claim to be a member of a political party. Do you think that has brought more honesty into the system?
- Mr ASH:** It has brought more honesty. Perhaps the monetary component is a bit discriminatory against some little parties that would like to get registered. I think you need \$5,000 upfront and so on, but it definitely has got rid of all the parties that were not genuine parties. I think the vote in the Legislative Council more accurately reflected the percentage of vote obtained by the parties than it did in the 1999 election where you had the Outdoor Recreation Party getting a seat with 0.2 per cent of the vote or something absurd. No party got a seat polling anything like that, including the last of the additional seats won by Labor, which had quite a strong election. They would have at least got 2 per cent of that vote; that was the minimum vote that won an upper House seat, whereas in the previous election, 0.2 per cent was perceived to be just too small.²⁰¹
- 5.60 In relation to group voting squares, under the new provisions a person voting 'above the line' may number preferences for the different groups from '1' onwards. The first preference indicated for a group will take the voter's preferences through the whole list of candidates in that group below the line. The second preference indicated for a further group will then continue the application of preferences to all candidates in that group below the line and so on.²⁰² The new provisions also eliminated the ability of parties to garner preference deals to help their members get elected. Political parties are still able to hand out how-to-vote cards indicating how they would like voter's preferences to be given but the choice is left to the voter. Consequently, only groups with at least 15 candidates are able to have a group voting square above the

¹⁹⁸ Section 66A of the *Parliamentary Electorates and Elections Act 1912*

¹⁹⁹ Section 66F of the *Parliamentary Electorates and Elections Act 1912*

²⁰⁰ Section 66FA of the *Parliamentary Electorates and Elections Act 1912*

²⁰¹ Transcript of evidence, Monday 23 May 2005, p. 16.

²⁰² Section 129EA of the *Parliamentary Electorates and Elections Act 1912*

line in accordance with the requirements in the *Constitution Act 1902* that voters must record preferences for at least 15 candidates.²⁰³

5.61 A number of comments were made about this new voting procedure which applied for the first time at the 2003 State election. It was noted by Antony Green that almost 20% of votes cast were ‘above the line’ with preferences. He provided the following statistics on the incidence of use for the new above the line voting system and also the number of preferences indicated above the line as part of his submission:

Categories of votes

2923425	78.56%	votes were cast as single Group Ticket Votes
729715	19.61%	votes were marked ‘above the line’ with preferences
68317	1.84%	votes were ‘below the line’ votes

Above the Line Votes with preferences

Above the line preference votes showed the following number of preferences (Percentages as a proportion of ATL votes with preferences.)

Preferences	Ballot Papers	%
1	2628	0.4
2	481830	66.0
3	800061	11.0
4	29078	4.0
5	20948	2.9
6	24104	3.3
7	3944	0.5
8	2319	0.3
9	1824	0.2
10	1586	0.2
11	1196	0.2
12	1356	0.2
13	2798	0.4
14	11366	1.6
15	64677	8.9
Total ATL	729715	
Average ATL preferences	3.90	
Median ATL preferences	2	

ATL votes as implied preferences for candidates

Average preferences	72.4
Median preferences	39

The use of the new system ranged from 9.47% for Group L (Pauline Hanson) voters to 37.56% for the Christian Democratic Party.²⁰⁴

²⁰³ Section 2(1) of the Sixth Schedule of the *Constitution Act 1902*

- 5.62 The Committee received differing views from a number of minor political parties about whether the new system of voting for the Legislative Council was better than what was previously in place. The Australian Democrats indicated in their submission that they preferred the previous system of voting arguing:

The introduction of upper house 'optional preferential above the line' voting in the 2003 election resulted in a polarisation of the vote to the major parties at the expense of the minor parties. This was because the smaller parties votes exhausted, rather than carrying on as preferences to like-minded parties.

The major parties had run a strong campaign about the unrepresentative nature of the upper house small parties and had made a huge issue of the large 'tablecloth' ballot paper. In that many of the small parties were clearly engineered by a few people, it would have been a better option to tighten party registration and preselection procedures for all parties. The further distortion of the electoral system in favour of the big parties was not necessary.²⁰⁵

- 5.63 However, the Greens noted that they supported optional preferential voting above the line and were glad to see the abolition of lodged Upper House tickets that allowed parties to make deals regarding preferences:

The Hon. DON HARWIN: ...I recall that the Greens were particularly keen to ensure that you cast preferences above the line...

Mr ASH: Yes.

The Hon. DON HARWIN: So you could put a "1" for the party box of your choice and then a "2" in the second party box of your choice. Do the Greens feel that that innovation is satisfactorily taking account of the wish of people to actually cast preferences beyond their own party?

Mr ASH: Yes, we do and I think in time we will find that more voters exercise their option to direct preferences above the line. We have only had one election—perhaps a local government election—where that has happened and that will increase as voters become more aware of how the new voting system works. But, no, as a party, the Greens do not favour group voting tickets at the Federal level or at a State level. One, it encourages front parties and, two, it encourages parties to behave unethically in that it is tempting for candidates to do deals with parties that they actually ideologically and in terms of policies are poles apart. In order to garner votes they will compromise their position, which often is misleading in terms of what their own voters would expect them to do. The system of a registered group voting ticket provides incentives for parties and candidates to do wrong things.²⁰⁶

- 5.64 In fact when the changes were introduced into the Parliament the Minister acknowledged that the Greens had initially raised the proposal.²⁰⁷

- 5.65 The Committee considers that the changes that were introduced following the 1999 election in relation to the registration of political parties have ensured that only genuine parties are able to contest elections for the Legislative Council. It also considers that the amendments to the *Parliamentary Electorates and Elections Act*

²⁰⁴ Antony Green, Submission to the Inquiry, p. 10.

²⁰⁵ The Australian Democrats, Submission to the Inquiry, p. 2.

²⁰⁶ Transcript of evidence, Monday 23 May 2005, p. 17.

²⁰⁷ See comments by The Hon. John Della Bosca, Special Minister of State, on the *Parliamentary Electorates and Elections Amendment Bill 1999*, Legislative Council Parliamentary Debates, 20 October 1999.

1912 to provide for voters to choose preferences above the line and the abolition of lodged Upper House tickets has effectively given the control of the election of members of the Legislative Council back to the voters.

VOTING PROCEDURES

5.66 A number of issues were raised throughout the inquiry about the voting procedures in place for Legislative Council elections in New South Wales including the group voting squares and 'above-the-line' voting and, optional preferential voting. Whilst the Committee is not of the view that the current voting procedures need to be changed, some of the issues were of interest to the Committee and should be noted.

Group voting squares

5.67 A number of submissions argued that above the line voting through group voting squares should be abolished. The PRS argued in its submission that by voting above the line the voter gives his or her vote to the political party that they choose above the line. It is also argued that the system of group voting squares results in wasted votes as a significant number of votes are exhausted:

The problem is that an opportunity is created for voters to take the easy way out and accept a complex order of preferences for often obscure candidates which a party machine asks them to take on trust the election of one or more candidates within a group is determined in advance by the party machine, rather than being a free choice by the voter at the poll.

The problem with above-the-line voting is that it creates two classes of voters – those that clearly make the voting decision themselves by voting below-the-line and those that do not and vote above-the-line.

Also, by marking just one square above-the-line, a significant number of votes can be exhausted, resulting in wasted votes. This is particularly the case where a candidate in a group just fails to be elected, with the votes for the candidate not being transferred to a preferred candidate or candidates in another group or groups. The opportunity to show above-the-line preferences for groups attempts to address this concern, but again eliminates the opportunity for voters to choose their own order of candidates within a group.²⁰⁸

5.68 Concerns about voters giving their vote to a political party were also expressed in the submission received from Brian Ellis. He commented:

The question does need to be asked as to why there is a need to have voting for the Upper House done by political parties. This continues to cause delays in counting of preference votes and, of course, the advertising and promotion of major parties for the Lower House candidates, carries over to the Upper House. The Upper House is supposed to be a House of Review yet the way the voting is currently structured, it makes it almost impossible for an Independent to be elected. Belonging to a Party does not carry any qualifications, so why should there be this bias.

If candidates for the Upper House were all named individually, with the party affiliation identified where appropriate, then the voters would have to decide who they wanted in the Upper House by personal selection. There would be no need for preferences as the voting would be by total number of votes received by each candidate. Even if there were

²⁰⁸

NSW Branch Proportional Representation Society, Submission to the Inquiry, p. 3.

a tie, i.e. two persons had the same number of votes, they would be elected until all vacancies were filled.....²⁰⁹

- 5.69 Despite these concerns it was also put to the Committee that group voting squares should be retained as the method of voting above the line helps to eliminate informal votes and is popular with the voters. Antony Green commented in his submission:

In NSW, PR-STV is used for the Legislative Council election, conducted at the same time as the Legislative Assembly election. Most of the focus is on the lower house, and as past elections have shown, voters in the Legislative Council vote overwhelmingly for parties rather than candidates.

...

As well, abandoning Group Ticket Voting would probably lead to an increase in the level of informal voting, an outcome which is not desirable.²¹⁰

- 5.70 The majority of the Committee do not see that there is any reason to change the current system of voting above the line. They are conscious that the method has been in place since 1978 when members of the Legislative Council were first elected by popular vote and was originally included in the legislation at that time to alleviate the problems of informal votes.²¹¹ The Committee also considers that the method of voting above the line is extremely popular with voters with only 1.84% of voters choosing to vote below the line.²¹²

Optional preferential voting

- 5.71 A number of submissions to the inquiry commented on optional preferential voting. Optional preferential voting is entrenched under the *Constitution Act 1902* as such a referendum would need to be held to abolish the system. However, it is unlikely that such a referendum would be approved as it was noted by Antony Green that optional preferential voting appears to be popular with the electors.²¹³

- 5.72 The PRS also support optional preferential voting arguing that it should not be mandatory for voters to record a certain number of preferences to record a valid vote. However, the PRS expressed concerns about the requirement for 15 votes to be recorded for those voters who choose to vote below the line for Legislative Council elections. The PRS commented:

Voters who choose to make their own voting decision regarding preference votes by voting below-the-line are clearly discriminated against. There is no need for this discrimination and a vote should be formal provided that at least the intention of the voter in recording a first preference is clear. Voters should be encouraged, but not obliged, to record as many preferences as they wish.

Technically, as long as there is a clear first preference, a vote can be counted, as has occurred in Eire and Malta since the 1920s and the ACT under Hare-Clark voting since 1995.

The ACT's approach, supported by the entire Legislative Assembly, has been to accept votes as formal provided that they have a single first preference. While this results in

²⁰⁹ Brian Ellis, Submission to the Inquiry.

²¹⁰ Antony Green, Submission to the Inquiry, p. 8.

²¹¹ See New South Wales Legislative Assembly, Parliamentary Debates, 2 June 1977, pp. 6533 - 6550

²¹² Statistics provided by Antony Green in his submission to the Inquiry, p. 10.

²¹³ Antony Green, Submission to the Inquiry, p. 8.

The Voting System for the Legislative Council

more exhausted votes when some candidates are excluded, the principle is that voters are being listened to closely rather than dictated to, and there has been no complaint about levels of exhausted votes.

It is important that voters understand they cannot harm the prospects of those they support most strongly by marking further preferences. If they choose to express only a handful or fewer of real preferences, they should be given that right, rather than have their vote invalidated at the outset and be deprived of their democratic right of freedom of choice.²¹⁴

- 5.73 The Committee appreciates the concerns raised by the PRS that voters should be able to vote for as few or as many candidates as they wish in Legislative Council elections. However, the Committee has not considered the matter in any detail and is reluctant to make any conclusions on its merits or otherwise.

²¹⁴ NSW Branch, Proportional Representation Society, p. 3.

Appendix One – Submissions and other documents received

Submissions received

1. The Hon. David Campbell MP, Member for Keira;
2. The Shooters' Party;
3. Byron Bay Branch ALP;
4. Mr Joe Alvaro;
5. NSW Branch ALP;
6. Mr Antony Green;
7. The Greens;
8. Mr Brian Ellis;
9. People with Disability Australia Incorporated;
10. State Electoral Office;
11. NSW Branch Proportional Representation Society of Australia;
12. Mr Peter Brun;
13. NSW Division Australian Democrats;
14. The Nationals – New South Wales Secretariat.

Other documents received

1. Supplementary submission from the Proportional Representation Society of Australia – NSW Branch;
2. Council on the Cost and Quality of Government, *Performance Review of the State Electoral Office*, May 2005 – received from the SEO;
3. New organisation structure of the SEO – received from the SEO;
4. Answers to questions on notice received from the SEO;
5. Information on the Joint Roll Agreement received from the SEO.

Appendix Two – Witnesses

Monday 23 May 2005

Mr Peter Brun, Honorary Treasurer, H.S. Chapman Society
Mr Geoff Ash, Deputy Registered Officer, The Greens
Mr Robert Brown, Chairman, The Shooters' Party
Mr John Webber, Chairman, NSW Branch of the Proportional Representation Society

Monday 6 June 2005

Mr Scott McFarlane, State Director, The Nationals
Mr Antony Green
Mr Colin Barry, Electoral Commissioner for New South Wales
Mr Brian DeCelis, Manager Election Services, State Electoral Office
Mr Terrence Jessop, Manager of Non-Parliamentary Elections, State Electoral Office

Appendix Three – Details of Study Tour

Friday 1 July 2005

Parliament of Malta

The Hon. Dr Tony Abela MP, Parliamentary Secretary to the Prime Minister
Dr Victor Scerri, President of the Nationalist Party General Council
Mr Henri Darmanin, Director Elcom, Nationalist Party

The Hon. Joe Mizzi MP, Opposition Whip
Dr Michael Falzon, Deputy Leader (Party Affairs), Labour Party of Malta

Electoral Commission of Malta

Mr Carmel De Gabriele, Chief Electoral Commissioner and Chairman of the Electoral
Commission
Mr Joe Calleja, Secretary to the Electoral Commission

Labour Party of Malta

Dr Michael Falzon, Deputy Leader (Party Affairs), Labour Party of Malta

Monday 4 July 2005

Leader of the Opposition - Malta

Dr Alfred Sant, Leader of the Opposition, Labour Party of Malta

Tuesday 5 July 2005

Franchise Section, Department of the Environment, Heritage and Local Government

Mr Maurice Coughlan, Principal, Franchise Section
Mr Dave Walsh, Assistant Principal, Franchise Section

Electronic Voting Commission

Mr Alan Murphy, Secretary to the Commission

Trinity College Dublin, Department of Political Science

Professor Michael Marsh
Professor Michael Gallagher

Wednesday 6 July 2005

Houses of the Oireachtas – Parliament of Ireland

Mr Seán Haughey TD, Chairman, Joint Committee on Environment and Local Government
Mr John Cregan TD, Member, Joint Committee on Environment and Local Government
Mr Séamus Burke, Clerk to the Oireachtas Committee on the Environment and Local Government

Thursday 7 July 2005

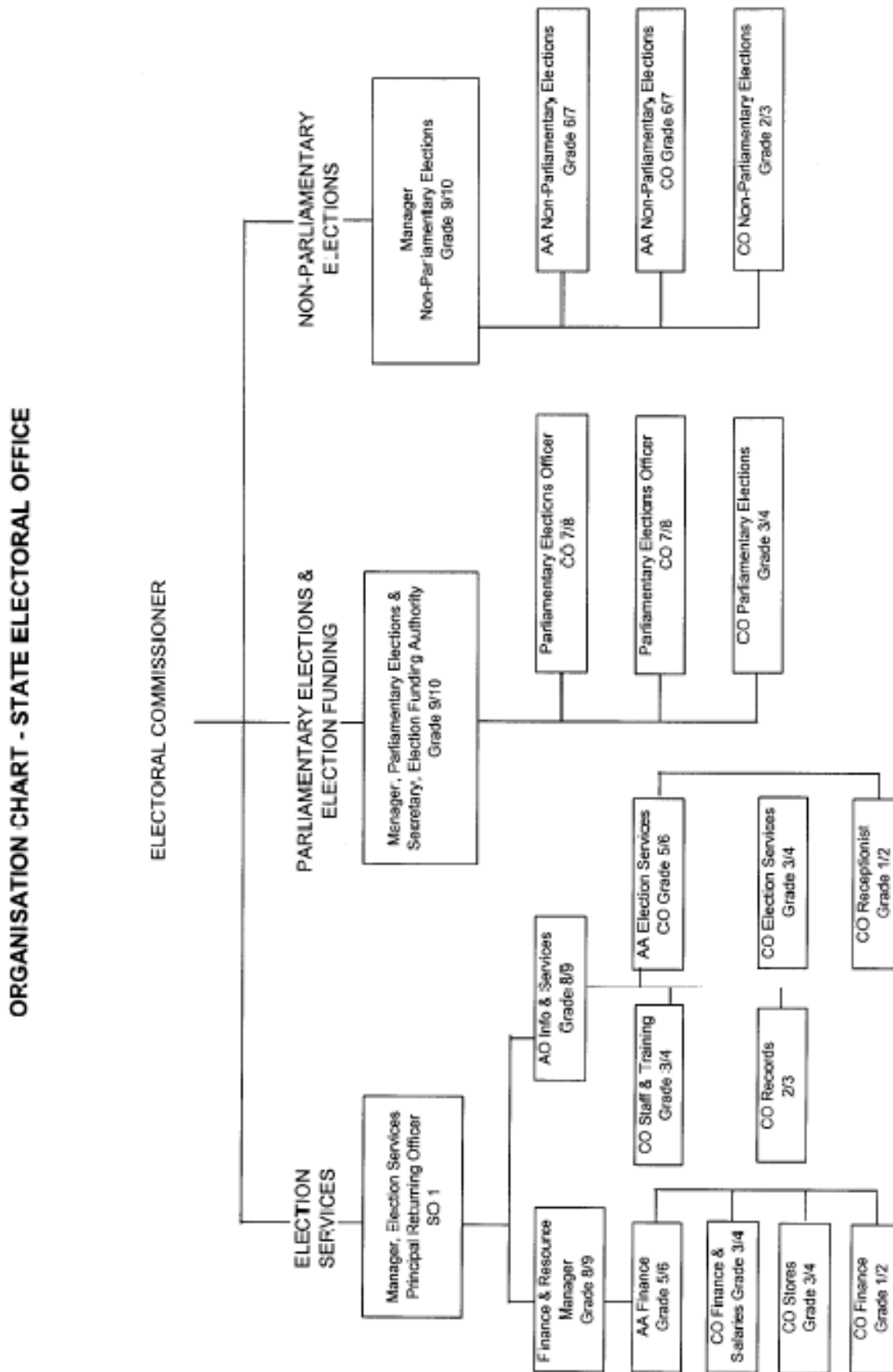
United Nations – Electoral Assistance Division, Department of Political Affairs

Mr Sean Dunne, Chief of Operations
Mr Scott Smith, Political/Electoral Affairs Officer

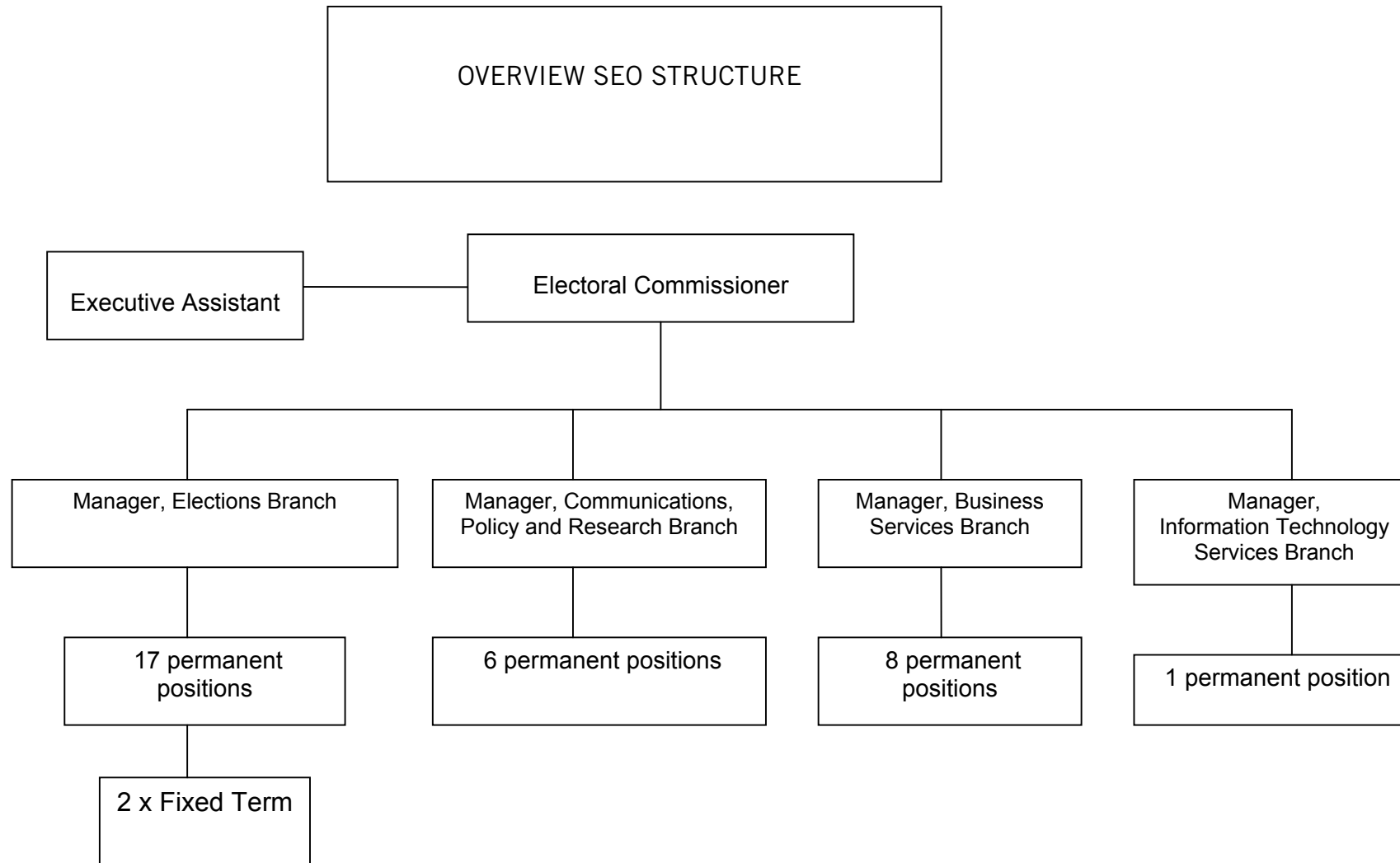
Columbia University, Department of Political Science

Professor Robert Erikson
Associate Professor Robert Lieberman

Appendix Four – Organisation Structure of the SEO



Source: State Electoral Office, Annual Report for 2003 – 2004, October 2004



Finalised 6/5/2005

Appendix Five – Schedule 6 of the *Constitution Act 1902*

SIXTH SCHEDULE—CONDUCT OF LEGISLATIVE COUNCIL ELECTIONS

(Secs. 16, 22A)

PART 1—SYSTEM OF ELECTION

- 1** At a periodic Council election, the whole of the State of New South Wales shall be a single electoral district for the return of 21 Members of the Legislative Council.
- 2(1)** At a poll for a periodic Council election, a voter shall be required to record his vote for 15 candidates and no more but shall be permitted to record his vote for as many more candidates as he pleases, so as to indicate in such manner as may be provided by law the candidates for whom he votes and the order of his preferences for them.
- (2)** Notwithstanding subclause (1) of this clause, a ballot-paper on which the voter has recorded not less than 15 votes is not informal by reason only that:
 - (a)** the same preference (other than his first preference) has been recorded on the ballot-paper for more than 1 candidate, but the ballot-paper shall be treated as if those preferences and any subsequent preferences had not been recorded on the ballot-paper; or
 - (b)** there is a break in the order of his preferences, but the ballot-paper shall be treated as if any subsequent preference had not been recorded on the ballot-paper.
- 3** For the purpose of a periodic Council election, 2 or more candidates may, in the manner provided by law, be included in a group in such order as may be determined by them.

PART 2—COUNTING OF VOTES AT ELECTIONS

- 4(1)** In this Part of this Schedule:

“continuing candidate” means a candidate not already elected or not excluded from the count;

“Council returning officer” means the person for the time being appointed by law to conduct periodic Council elections.
- (2)** In relation to any stage of the scrutiny, a reference in this Part of this Schedule to the surplus votes of an elected candidate is a reference to the number at that stage by which the elected candidate’s votes exceed the quota, reduced by the excess, if any, of the number at that stage of the elected candidate’s votes on which a next available preference for a continuing candidate is not indicated over the quota.
- 5** The method of counting the votes to ascertain the result of a periodic Council election shall be as provided in this Part of this Schedule.

- 6** At the close of the poll the Council returning officer shall ascertain the total number of first preference votes recorded for each candidate on all ballot-papers not rejected by him as informal and the total of all such votes.
- 7** The Council returning officer shall then determine a quota by dividing the total number of first preference votes for all candidates by 22 and by increasing the quotient so obtained (disregarding any remainder) by 1.
- 8** Any candidate who has received a number of first preference votes equal to or greater than the quota so determined shall be elected.
- 9** Where the number of first preference votes received by a candidate is equal to the quota, the whole of the ballot-papers containing those votes shall be set aside as finally dealt with.
- 10** Unless all vacancies have been filled, the surplus votes of each elected candidate shall be transferred to the continuing candidates, in proportion to the voters' preferences, as follows:
- (a)** The Council returning officer shall divide the number of the elected candidate's surplus votes by the number of first preference votes (excluding any first preference votes indicated on ballot-papers which do not bear a next available preference for a continuing candidate) received by him and the resulting fraction shall, for the purposes of this clause, be the transfer value of that candidate's surplus votes.
 - (b)** The Council returning officer shall take all of the ballot-papers of the elected candidate on which a next available preference is indicated for a continuing candidate and arrange them in separate parcels for the continuing candidates according to the next available preference indicated on them.
 - (c)** The Council returning officer shall ascertain, from the parcel referred to in paragraph (b) in respect of each continuing candidate, the total number of ballot-papers of the elected candidate which bear the next available preference for that continuing candidate and shall, by multiplying that total by the transfer value of the elected candidate's surplus votes, determine the number of votes to be transferred from the elected candidate to each continuing candidate.
 - (d)** If, as a result of the multiplication, any fraction results, so many of those fractions, taken in the order of their magnitude, beginning with the largest, as are necessary to ensure that the number of votes transferred equals the number of the elected candidate's surplus votes shall be reckoned as of the value of unity and the remaining fractions shall be ignored.
 - (e)** The Council returning officer shall then determine the number of ballot-papers to be transferred from the elected candidate to each continuing candidate.
 - (f)** The Council returning officer shall then, in respect of each continuing candidate, forthwith take at random, from the parcel referred to in paragraph (b) containing the ballot-papers of the elected candidate which bear the next available preference for that continuing candidate, the number of ballot-papers determined under paragraph (e) and transfer those ballot-papers to the continuing candidate.

- (g) The ballot-papers containing the first preference votes of the elected candidate which have not been transferred (that is, the ballot-papers containing the number of votes equal to the quota) shall be set aside as finally dealt with.
- 11(1)** When the surplus votes of all elected candidates have been transferred to the continuing candidates as provided by clause 10, any continuing candidate who has received a number of votes equal to or greater than the quota shall be elected.
- (2) Unless all the vacancies have been filled, the surplus votes of the elected candidate shall be transferred to the continuing candidates in accordance with the provisions of clause 10, but, in the application of those provisions, only those ballot-papers which have been transferred to the elected candidate from a candidate previously elected shall be taken into consideration.
- 12(1)** If, as a result of the transfer of the surplus votes of a candidate elected in pursuance of clause 11 or elected at a later stage of the scrutiny, a continuing candidate has received a number of votes equal to or greater than the quota, he shall be elected.
- (2) Unless all the vacancies have been filled, the surplus votes of the elected candidate shall be transferred to the continuing candidates in accordance with the provisions of clause 10, but, in the application of those provisions, only those ballot-papers which have been transferred to the elected candidate from the candidate or candidates elected at the last preceding count shall be taken into consideration.
- 13** The ballot-papers containing the first preference votes of a candidate who has been elected in pursuance of the provisions of clause 11 or 12, together with the ballot-papers transferred to him from a candidate previously elected or excluded which have not been further transferred, shall be set aside as finally dealt with.
- 14(1)** If, after the transfer of the surplus votes of the elected candidates, no candidate has, or less than the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who has the fewest votes shall be excluded and the whole of his ballot-papers shall be transferred to the continuing candidates next in order of the voters' available preferences.
- (2) If thereupon, or as the result of the exclusion of a candidate at any subsequent stage of the scrutiny, a continuing candidate has received a number of votes equal to or greater than the quota, he shall be elected.
- (3) Unless all the vacancies have then been filled, the surplus votes of the elected candidate shall be transferred to the continuing candidates in accordance with the provisions of clause 10, but, in the application of those provisions, only those ballot-papers which have been transferred to the elected candidate from the candidate last excluded shall be taken into consideration.
- (4) The ballot-papers containing the first preference votes of the elected candidate, together with the ballot-papers transferred to him from a candidate previously elected or excluded which have not been further transferred, shall be set aside as finally dealt with.
- (5) If no continuing candidate has then received a number of votes equal to the quota, the process of excluding the candidate with the fewest votes and the transferring of ballot-papers containing those votes to the continuing candidates shall be repeated until a continuing candidate has received a number of votes equal to the quota or, in

respect of the last vacancy, a majority of the votes remaining in the count, but the process of excluding candidates shall not be repeated after the number of continuing candidates is equal to the number of unfilled vacancies.

- (6)** A ballot-paper that under this clause is, pursuant to the exclusion of a candidate, required to be transferred to a continuing candidate shall be set aside as finally dealt with if it does not indicate a next available preference for a continuing candidate.
- 15** After all the candidates who have received a number of votes equal to the quota are elected:
- (a)** where there is 1 remaining unfilled vacancy—the candidate who has received a majority of the votes remaining in the count; or
- (b)** where the number of continuing candidates is equal to the number of remaining unfilled vacancies—those candidates,
- shall be elected.
- 16** Where, on the count of the first preference votes, or at the same time at any subsequent stage of the scrutiny, 2 or more candidates are elected by reason of their having received a number of votes equal to or greater than the quota, any transfer of the surplus votes of those candidates shall be carried out in the order, first of the candidate with the largest surplus, second of the candidate with the next largest surplus and so on.
- 17(1)** Notwithstanding anything contained in this Part of this Schedule, a transfer of the surplus votes of an elected candidate shall be deferred (but without affecting the order of that transfer) so long as the total number of those surplus votes and any other surplus votes not transferred is less than the difference between the total votes of the 2 continuing candidates with the fewest votes.
- (2)** In any such case, unless all vacancies have been filled, the candidate with the fewest votes shall be first excluded and the ballot-papers containing his votes shall be transferred to the continuing candidates as provided in clause 14 (1).
- 18(1)** If, on any count, 2 or more candidates have an equal number of votes, and 1 of them has to be excluded, the candidate whose name is on the slip drawn in accordance with subclause (4) of this clause shall be excluded.
- (2)** If, at the time of their election, 2 or more candidates have an equal number of votes that is more than the quota, the candidate whose name is on the slip drawn in accordance with subclause (4) of this clause shall, for the purposes of clause 16, be deemed to have had the larger or largest surplus.
- (3)** If, on the final count for filling the last vacancy, 2 candidates have an equal number of votes, 1 candidate shall be excluded in accordance with subclause (1) of this clause and the other shall be elected.
- (4)** For the purposes of subclauses (1) and (2) of this clause, the names of the candidates who have an equal number of votes having been written on similar slips of paper by the Council returning officer and the slips having been folded by him so as to prevent the description being seen and having been mixed, 1 of those slips shall be drawn at random by him

Appendix Six – Minutes

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (No. 1)

Thursday 16 September 2004 at 10 am

Parliament House

Members Present

The Hon. Arthur Chesterfield-Evans, MLC	Mr Corrigan, MP
The Hon. Amanda Fazio, MLC	Mr Pearce, MP
The Hon. Jenny Gardiner, MLC	Ms Saliba, MP
The Hon. Don Harwin, MLC	

The Clerk of the Legislative Assembly opened the first meeting of the committee and read the following extract from the Votes and Proceedings of the Legislative Assembly of 14 May 2004, entry 6 (as amended by V&P 31/08/2004, entry 4 and V&P 01/09/2004, entry 18) –

“Joint Standing Committee on Electoral Matters

- (1) That a Joint Standing Committee, to be known as the Joint Standing Committee on Electoral Matters be appointed.
- (2) That the Committee inquire into and report upon such matters as may be referred to it by either House of the Parliament or a Minister that relate to:
 - (a) The following electoral laws:
 - (i) *Parliamentary Electorates and Elections Act 1912* (other than Part 2);
 - (ii) *Election Funding Act 1981*; and
 - (iii) those provisions of the *Constitution Act 1902* that relate to the procedures for, and conduct of, elections for members of the Legislative Assembly and the Legislative Council (other than sections 27, 28 and 28A);
 - (b) The administration of and practices associated with the electoral laws described at (a).
- (3) All matters that relate to (2)(a) and (b) above in respect of the 22 March 2003 State election, shall stand referred to the Committee for any inquiry the Committee may wish to make. The Committee shall report on the outcome of any such inquiry within 12 months of the date of this resolution being agreed to by both Houses.
- (4) That the Committee consist of seven members, as follows:
 - (a) three government members of the Legislative Assembly, and
 - (b) four members of the Legislative Council of whom:
 - (i) one must be a government member,
 - (ii) two must be opposition members, and
 - (iii) one must be a cross bench member.
- (5) That the members be nominated in writing to the Clerk of the Legislative Assembly and the Clerk of the Legislative Council by the relevant party leaders and the cross-bench members respectively, within seven days of this resolution being agreed to by both Houses. In the absence of any agreement concerning Legislative Council representation on the committee the matter is to be determined by that House.
- (6) That notwithstanding anything contained in the Standing Orders of either House, at any meeting of the Committee, any four members of the Committee will constitute a quorum, provided that the Committee meets as a joint committee at all times.

Minutes

- (7) That the Committee have leave to sit during the sittings or any adjournment of either or both Houses.
- (8) That the Committee have power:
- (a) to send for and examine persons, papers, records and things,
 - (b) to adjourn from place to place,
 - (c) to make visits of inspection within the State of New South Wales and elsewhere in Australia, and
 - (d) to take evidence in accordance with the provisions of the *Parliamentary Evidence Act 1901*.
- (9) That the Committee have leave to report from time to time.
- (10)(a) That if either House is not sitting when the Committee wishes to report, the Committee have leave to send any such report, minutes and evidence to the Clerk of each House.
- (b) A report presented to the Clerk is:
- (i) on presentation, and for all purposes, deemed to have been laid before the House,
 - (ii) to be printed by authority of the Clerk,
 - (iii) for all purposes, deemed to be a document published by order or under the authority of the House, and
 - (iv) to be recorded in the official proceedings of the House.
- (11) That the Legislative Assembly the Legislative Council to agree to a similar resolution and name the time and place for the first meeting.”

Membership

The Clerk of the Legislative Assembly read the following extract from the Votes and Proceedings of Wednesday 15 September 2004, entry 2 –

“Mr SPEAKER

The Legislative Council desires to inform the Legislative Assembly the following members of the Legislative Council have been appointed to serve as members on the Joint Standing Committee on Electoral Matters:

Ms Fazio

Mr Harwin

Miss Gardiner

Dr Chesterfield-Evans

Legislative Council
15 September 2004

MEREDITH BURGMANN
President

The Clerk of the Legislative Assembly also informed the committee that he had received correspondence from the Government Whip in the Legislative Assembly advising that Mr Corrigan, Mr Pearce and Ms Saliba were the Government members of the Legislative Assembly nominated to serve on the Joint Standing Committee on Electoral Matters.

Election of Chairman

Resolved, on the motion of Mr Corrigan, seconded by Mr Pearce:

That Ms Saliba be elected Chairman of the committee.

Secretariat

The Clerk of the Legislative Assembly informed the committee on the staffing arrangements and introduced the officers of the secretariat.

Procedural Motions

Resolved, on the motion (in globo) of Mr Harwin, seconded by Mr Pearce:

1. That arrangements for the calling of witnesses and visits of inspection be left in the hands of the Chairman and the Committee Manager to the Committee.
2. That, unless otherwise ordered, parties appearing before the Committee shall not be represented by any member of the legal profession.
3. That, unless otherwise ordered, when the Committee is examining witnesses, the press and public (including witnesses after examination) be admitted to the sitting of the Committee.
4. That persons having special knowledge of the matters under consideration by the Committee may be invited to assist the Committee.
5. That press statements on behalf of the Committee be made only by the Chairman after approval in principle by the Committee or after consultation with Committee members.
6. That, unless otherwise ordered, access to transcripts of evidence taken by the Committee be determined by the Chairman and not otherwise made available to any person, body or organisation: provided that witnesses previously examined shall be given a copy of their evidence; and that any evidence taken in camera or treated as confidential shall be checked by the witness in the presence of the Committee Manager to the Committee or another officer of the Committee.
7. That the Chairman and the Committee Manager to the Committee be empowered to negotiate with the Speaker through the Clerk of the Legislative Assembly for the provision of funds to meet expenses in connection with advertising, operating and approved incidental expenses of the Committee.
8. That the Chairman be empowered to advertise and/or write to interested parties requesting written submissions.
9. That upon the calling of a division or quorum in either House during a meeting of the Committee, the proceedings of the Committee shall be suspended until the Committee again has a quorum.
10. That the Chairman and the Committee Manager make arrangements for visits of inspection by the committee as a whole and that individual members wishing to depart from these arrangements be required to make their own arrangements.
11. That pursuant to Legislative Assembly Standing Order 338, evidence, submissions or other documents presented to the committee which have not been reported to the House not be disclosed or published by any Member of the Committee or by any other person.

Deliberation

The committee deliberated about various administrative matters in relation to conducting its work.

The committee also deliberated about issues, sources of information and methods of inquiring into the conduct of the 2003 state election.

Resolved, on the motion of Mr Pearce, seconded by Mr Corrigan:

The Chairman write to the Electoral Commissioner advising of the appointment of the committee and inviting him to brief the committee at a future meeting and the subsequent preparation of a subsequent formal submission.

The committee adjourned at 10:35 am until 10:00 am on Friday 29 October 2004.

Chairman

Committee Manager

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (No. 2)

Thursday 28 October 2004 at 5.30 pm

Parliament House

Minutes

Members Present

The Hon. Arthur Chesterfield-Evans, MLC Mr Corrigan, MP

The Hon. Amanda Fazio, MLC Mr Pearce, MP

The Hon. Jenny Gardiner, MLC Ms Saliba, MP

The Hon. Don Harwin, MLC

The committee met pursuant to notice at an amended hour and day.

Minutes

Resolved, on the motion of Ms Fazio, seconded by Mr Corrigan:

That the minutes of the meeting held on 16 September 2004 be confirmed.

Matters Arising from the Minutes

- The committee expressed the view that copies of incoming correspondence should be circulated to committee members with the agenda.
- The committee expressed the view that it was desirable to meet every second sitting week at 10 am on Fridays.

Election of Vice-Chairman

Resolved, on the motion of Ms Fazio, seconded by Mr Pearce:

That Mr Corrigan be elected Vice-Chairman of the committee.

First Inquiry

The committee deliberated about the circulated note with suggested terms for the first inquiry, together with a proposed timetable for the inquiry.

The committee noted the various matters, suggested by members, as suitable for examination, including a note circulated by Dr Chesterfield-Evans.

The committee deliberated further.

Ms Gardiner suggested the following terms of reference for the first inquiry:

- (1) That the Joint Standing Committee on Electoral Matters inquire into and report on all aspects of the conduct of the 2003 NSW Election and related matters, including but not limited to:
 - (a) the role of the State Electoral Office;
 - (b) the consistency of procedures used, and rulings made, District Returning Officers;
 - (c) postal voting, including an examination of inconsistencies between State and Federal postal voting legislation and procedures;
 - (d) the criteria used for the designation of pre-poll voting places; and
 - (e) procedures and provisions relating to the confirmation of enrolment.
- (2) That in conducting its inquiry into the 2003 election the committee include for examination and report:
 - (a) the problems associated with the finalisation of the counting of votes in the Legislative Council periodic election, and in particular-
 - the identification of the nature of the problems
 - ascertaining why the problems occurred
 - ascertaining why the problems were not identified earlier
 - ascertaining what can be done to ensure that such problems do not occur again
 - any other relevant matter in addressing these problems;
 - (b) the changes to the Legislative Council voting system that applied for the first time at the 2003 periodic election, such as, group voting squares; and
 - (c) the counting of preference votes, including random sampling.

NB: The Committee is precluded from inquiring into Part 2 of the *Parliamentary Electorates and Elections Act 1912* and sections 27, 28 and 28A of the *Constitution Act 1902* which concerns the distribution of electorates.

The committee adjourned at 6:20 pm until 10:00 am on Friday 12 November 2004.

Chairman

Committee Manager

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (No. 3)

Friday 12 November 2004 at 10 am

Parliament House

Members Present

The Hon. Arthur Chesterfield-Evans, MLC

Mr Corrigan, MP

The Hon. Jenny Gardiner, MLC

Mr Pearce, MP

The Hon. Don Harwin, MLC

Ms Saliba, MP

Apology

An apology was received from Ms Fazio.

Briefing

Mr Colin Barry, Electoral Commissioner of NSW, was admitted and briefed the committee on the development of corporate directions and other resourcing and development issues for the State Electoral Office.

Minutes

Resolved, on the motion of Mr Pearce, seconded by Mr Harwin:

That the minutes of the meeting held on 28 October 2004 be confirmed.

Correspondence – Review of the State Electoral Office

The committee noted correspondence (received by all members of the committee) from Prof. Percy Allan, Chair – NSW Council on the Cost and Quality of Government and Mr Colin Barry, Electoral Commissioner of NSW, jointly, advising of the review to be conducted by the Council on the Cost and Quality of Government to report on certain strategic and operational issues of the State Electoral Office.

The committee deliberated.

Resolved, on the motion of Mr Pearce, seconded by Mr Harwin:

That the Chairman write to all members of both Houses to:

1. inform them of the review of the State Electoral Office to be conducted by the Council on the Cost and Quality of Government; and
2. invite them to forward any comments to the committee for collation and forwarding to the Council or to pass on any comments and submissions directly to the Council.

First Inquiry

The committee deliberated about on the proposed terms of reference for the first inquiry previously circulated.

Ms Gardiner moved, seconded by Mr Pearce:

That the committee adopt following terms of reference for its first inquiry:

Minutes

- (1) That the Joint Standing Committee on Electoral Matters inquire into and report on all aspects of the conduct of the 2003 NSW Election and related matters, including but not limited to:
 - (a) the role of the State Electoral Office;
 - (b) the consistency of procedures used, and rulings made, District Returning Officers;
 - (c) postal voting, including an examination of inconsistencies between State and Federal postal voting legislation and procedures;
 - (d) the criteria used for the designation of pre-poll voting places; and
 - (e) procedures and provisions relating to the confirmation of enrolment.
- (2) That in conducting its inquiry into the 2003 election the committee include for examination and report:
 - (a) the problems associated with the finalisation of the counting of votes in the Legislative Council periodic election, and in particular-
 - the identification of the nature of the problems
 - ascertaining why the problems occurred
 - ascertaining why the problems were not identified earlier
 - ascertaining what can be done to ensure that such problems do not occur again
 - any other relevant matter in addressing these problems;
 - (b) the changes to the Legislative Council voting system that applied for the first time at the 2003 periodic election, such as, group voting squares; and
 - (c) the counting of preference votes, including random sampling.

NB: The Committee is precluded from inquiring into Part 2 of the Parliamentary Electorates and Elections Act 1912 and sections 27, 28 and 28A of the Constitution Act 1902 which concerns the distribution of electorates.

Upon which Dr Chesterfield-Evans moved, That the motion be amended by adding the following:

- (3) To develop a statement of intent for the Parliamentary Electorates and Elections Act. At present there is no principle guiding the operation of the Act. Suggested wording might be: "The Act should have as its primary object to deliver an election outcome resulting in a composition of the Parliament that accurately represents the voting intentions of the population." Once the statement of intent is developed it will be necessary to examine how best this can be implemented.
- (4) The suggested areas that need to be examined to support the proposition include:
 - (a) political Advertising- how much and when;
 - (b) voting procedures – the role of SEO, voter identity, electronic voting, examination of compulsory voting;
 - (c) electoral funding – what should be allowed and what should be declared;
 - (d) use of the Political Education Fund; and
 - (e) school education – compulsory civics teaching on how all three levels of government work.

Question – That the amendment be agreed to - put and negatived.

Original question – put and passed.

The committee adjourned at 6:20 pm until a date to be determined.

Chairman

Committee Manager

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (No. 4)

Friday 4 March 2005 at 10 am

Parliament House

Members Present

Ms Saliba, MP (Chairman)

The Hon. Arthur Chesterfield-Evans, MLC

Mr Corrigan, MP

The Hon. Jenny Gardiner, MLC

The Hon. Don Harwin, MLC

Apologies

Apologies were received from Ms Fazio and Mr Pearce.

Minutes

Resolved, on the motion of Mr Corrigan, seconded by Mr Harwin:

That the minutes of the meeting held on 12 November 2004 be confirmed.

Publication of Minutes

Resolved, on the motion of Dr Chesterfield-Evans, seconded by Mr Harwin:

That the committee authorises, under the Parliamentary Papers (Supplementary Provisions) Act 1975, the publication of the confirmed minutes of the meetings held on 16 September, 28 October and 12 November 2004.

First Inquiry

Submissions

Submissions for the first inquiry having been previously circulated the committee deliberated.

The committee agreed that the Chairman write follow up letters to the Australian Democrats, the Proportional Representation Society and Beyond Federation seeking submissions.

The committee agreed that a Crown Solicitor's advising be sought as to whether a referendum held on the same day as the 2007 general election to amend schedule six of the Constitution Act could be applied at the 2007 election.

Resolved, on the motion of Dr Chesterfield-Evans, seconded by Mr Harwin:

That the committee authorises the publication on the committee website the submissions (including subsequent submissions) received in relation the first inquiry.

The committee agreed that the Chairman write to the major political parties to seek their views on issues raised in he submissions.

Hearing Dates

The committee deliberated over hearing dates and agreed on 6 May 2005 with 27 May 2005 as a reserve date.

Deliberation

- The committee deliberated and agreed to invite Prof. Percy Allan, Chair – NSW Council on the Cost and Quality of Government, to brief the committee about issues raised in the Council's review of the State Electoral Office.
- The committee deliberated over the issue of the differences between Federal and NSW provisions for the administration of elections. The committee agreed that a schedule of the inconsistencies be prepared and the Federal Committee be approached to obtain its work programme. In relation to this, the committee also sought a briefing note on the functions performed by the Australian Electoral Commission under the joint electoral roll agreement.

The committee adjourned at 10:45 am until 10 am on Friday 8 April 2005.

Chairman

Committee Manager

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (No. 5)

Friday 8 April 2005 at 10 am

Minutes

Parliament House

Members Present

Ms Saliba, MP (Chairman)

The Hon. Arthur Chesterfield-Evans, MLC

Mr Corrigan, MP

The Hon. Amanda Fazio, MLC

The Hon. Jenny Gardiner, MLC

The Hon. Don Harwin, MLC

Mr Pearce, MP

Minutes

Resolved, on the motion of Mr Corrigan, seconded by Dr Chesterfield-Evans:

That the minutes of the meeting held on 4 March 2005 be confirmed and published.

Correspondence

The Committee noted the letter to the Crown Solicitor seeking advice in relation to the application of a referendum on the method of counting votes for the Legislative Council and the advice received.

First Inquiry –

Additional Submissions

Additional submissions for the first inquiry having been previously circulated the committee deliberated.

The Committee noted that in accordance with the resolution agreed to at the meeting of 4 March 2005 that the additional submissions be published on the website.

Hearing Dates and Witnesses

The committee deliberated over hearing dates and agreed on 23 May 2005 with 6 June 2005 as a reserve date.

The Committee deliberated over which witnesses to invite to give evidence and agreed on the following:

1. Representatives of the Shooters' Party;
2. Representatives of the ALP;
3. Antony Green;
4. Colin Barry, Electoral Commissioner;
5. Representatives of the Proportional Representation Society;
6. Peter Brun;
7. Representatives of the Australian Democrats;
8. Representatives of the Greens;
9. Dr Narelle Miragliotta, Department of Political Science, the University of Western Australia;

The Committee also agreed to invite representatives from The Nationals and the Liberal Party on a future day.

Deliberation

- The committee deliberated on the need to gather independent expert advice on the integrity of the computer system used by the SEO to count votes and agreed to consider a proposal to provide for this independent review at the next meeting.

The committee adjourned at 10:55 am until 1 pm on Thursday 5 May 2005.

Chairman

Committee Manager

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (No. 6)

Thursday 5 May 2005 at 1 pm

Parliament House

Members Present

Ms Saliba, MP (Chairman)

The Hon. Arthur Chesterfield-Evans, MLC

The Hon. Amanda Fazio, MLC

The Hon. Jenny Gardiner, MLC

The Hon. Don Harwin, MLC

Mr Pearce, MP

Apology

Mr Corrigan, MP

Minutes

Resolved, on the motion of Mr Pearce, seconded by Mr Harwin:

That the minutes of the meeting held on 8 April 2005 be confirmed and published.

First Inquiry –

Hearing Dates and Witnesses

The committee was updated on arrangements for the forthcoming hearings.

Advisor

Resolved, on the motion of Mr Harwin, seconded by Ms Fazio:

That Professor Carelli, Assistant Dean of the Faculty of Information Technology at the Queensland University of Technology, be engaged as an advisor to the committee in relation to possible independent expert advice on the integrity of the computer system used by the SEO to count votes for Legislative Council periodic elections.

New Zealand Justice and Electoral Committee

The committee was advised of a request from the New Zealand Justice and Electoral Committee to meet on either Wednesday 25 or Thursday 26 May 2005.

The committee deliberated.

Resolved, on the motion of Ms Fazio, seconded by Mr Pearce:

That the committee meet the New Zealand Justice and Electoral Committee on Thursday 26 May 2005.

The committee adjourned at 1:20 pm until 9:15 am on Monday 23 May 2005.

Chairman

Committee Manager

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (No. 7)

Monday 23 May 2005 at 9.15 am

Parliament House

Members Present

Ms Saliba, MP (Chairman)

Minutes

The Hon. Arthur Chesterfield-Evans, MLC	Mr Corrigan, MP
The Hon. Amanda Fazio, MLC	The Hon. Jenny Gardiner, MLC
The Hon. Don Harwin, MLC	Mr Pearce, MP

Minutes

Resolved, on the motion of Mr Harwin, seconded by Mr Pearce:
That the minutes of the meeting on 5 May 2005 be confirmed and published.

Study Tour

Resolved, on the motion of Mr Pearce, seconded by Ms Gardiner:
That a submission be prepared for an overseas study tour to cover issues to assist the committee with its first report.

Public Hearing

The press and public were admitted.
Mr Peter Brun, Honorary Treasurer of the HS Chapman Society, sworn and examined.
Evidence concluded.
Mr Geoffrey Ash, Deputy Registered Officer of The Greens, affirmed and examined.
Evidence concluded.
Mr Robert Brown, Chairman of the Shooters' Party, sworn and examined.
Evidence concluded.
Mr John Webber, Chairman - NSW Branch of the Proportional Representation Society of Australia, sworn and examined.
Evidence concluded, the witnesses and public withdrew.

The committee adjourned at 12:55 pm until 10 am on Monday 6 June 2005.

Chairman

Committee Manager

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (No. 8)

Monday 6 June 2005 at 10.15 am
Parliament House

Members Present

Ms Saliba, MP (Chairman)	
The Hon. Arthur Chesterfield-Evans, MLC	Mr Corrigan, MP
The Hon. Amanda Fazio, MLC	The Hon. Jenny Gardiner, MLC
The Hon. Don Harwin, MLC	Mr Pearce, MP

Minutes

Resolved, on the motion of Mr Corrigan, seconded by Ms Gardiner:
That the minutes of the meeting on 23 May 2005 be confirmed and published.

Publication of Transcripts

Resolved, on the motion of Mr Harwin, seconded by Ms Gardiner:

That the committee authorises the publication of the uncorrected transcripts of evidence taken on 23 May and 6 June 2005.

Public Hearing

The press and public were admitted.

Mr Scott McFarlane, State Director of The Nationals NSW, sworn and examined.

Evidence concluded.

Mr Antony Green, affirmed and examined.

Evidence concluded.

Mr Colin Barry, Electoral Commissioner of NSW, affirmed; Mr Brian DeCelis, Manager Election Services of the State Electoral Office, sworn; Mr Terrence Jessop, Manager Non-Parliamentary Elections of the State Electoral Office, sworn; all examined.

Evidence concluded, the witnesses and public withdrew.

The committee adjourned at 4 pm until 1.15 pm on Thursday 23 June 2005.

Chairman

Committee Manager

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (No. 9)

Thursday 23 June 2005 at 1.15 pm

Parliament House

Members Present

Ms Saliba, MP (Chairman)

Mr Corrigan, MP

The Hon. Jenny Gardiner, MLC

Mr Pearce, MP

The Hon. Amanda Fazio, MLC

The Hon. Don Harwin, MLC

Apology

An apology was received from The Hon. Arthur Chesterfield-Evans, MLC.

Minutes

Resolved, on the motion of Mr Pearce, seconded by Mr Harwin:

That the minutes of the meeting on 6 June 2005 be confirmed and published.

Deliberation

The committee deliberated on the range of issues to be covered in the draft report.

The committee also agreed to obtain consultant's advice on the material presented by the State Electoral Office concerning the counting of votes for the 2003 Legislative Council periodic election.

The committee adjourned at 1.35 pm until 10 am on Thursday 18 August 2005.

Chairman

Committee Manager

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (No. 10)

Minutes

Thursday 18 August 2005 at 10.00 am
Parliament House

Members Present

Ms Saliba, MP (Chairman)

The Hon. Amanda Fazio, MLC

The Hon. Don Harwin, MLC

The Hon. Jenny Gardiner, MLC

Mr Pearce, MP

Apologies

Apologies were received from the Hon. Arthur Chesterfield-Evans, MLC and Mr Corrigan, MP.

Minutes

Resolved, on the motion of Mr Pearce, seconded by Ms Fazio:

That the minutes of the meeting on 23 June 2005 be confirmed and published.

Consideration of Draft Report

The draft report on the first inquiry of the committee having been previously circulated—

The committee noted correspondence from the Hon. Chesterfield-Evans forwarding his views and comments on the draft report.

The committee considered the draft report.

Recommendation 1, proposed and postponed.

Recommendation 2, put—

The committee divided

Ayes 2 [Gardiner, Harwin] Noes 3 [Fazio, Pearce, Saliba]

Negatived.

Recommendations 3, 4 and 5, put and agreed to.

Recommendation 6, amended, put and agreed to.

Recommendation 7, proposed and omitted.

Recommendation 8, amended, put and agreed to.

Recommendation 9, proposed and omitted.

Recommendations 10 and 11, put and agreed to.

Recommendation 12, proposed and omitted.

Recommendation 13, amended, put and agreed to.

Recommendation 14, proposed and omitted.

Recommendation 15, proposed and postponed.

Recommendations 16 to 17, put—

The committee divided

Ayes 2 [Gardiner, Harwin] Noes 3 [Fazio, Pearce, Saliba]

Negatived.

Recommendation 18, proposed and omitted.

Recommendations 19 and 20, amended, put and agreed to.

Recommendations 21 and 22, put and agreed to.

Recommendation 23, proposed and postponed.

Recommendations 24 to 27, put and agreed to.

Recommendations 28 and 29, amended, put and agreed to.

Recommendations 30 to 32, put and agreed to.

Recommendation 33, proposed and postponed.
Recommendation 34, proposed and omitted.
Recommendations 35 to 37, amended, put and agreed to.
Recommendations 38 and 39, proposed and postponed.

The postponed recommendations and text to be considered at the next meeting.
The committee adjourned at 11.25 am until 2 pm on Thursday 8 September 2005.

Chairman

Committee Manager

Minutes of Proceedings of the Joint Standing Committee on Electoral Matters (No. 11)

Thursday 8 September 2005 at 2.00 pm
Parliament House

Members Present

Ms Saliba, MP (Chairman)
The Hon. Arthur Chesterfield-Evans, MLC Mr Corrigan, MP
The Hon. Amanda Fazio, MLC The Hon. Jenny Gardiner, MLC
Mr Pearce, MP

Apology

An apology was received from the Hon. Don Harwin, MLC.

Minutes

Resolved, on the motion of Ms Fazio, seconded by Mr Pearce:
That the minutes of the meeting on 18 August 2005, as amended, be confirmed and published.

Further Consideration of Revised Draft Report

The revised draft report on the first inquiry of the committee having been previously circulated—

The committee considered the revised draft report.

Executive summary, amended and again proposed.

Upon which Ms Fazio moved at page xi, second paragraph, last sentence:

That the words “The Committee is of the view that more detailed consideration should be given to this suggestion when the Act is reviewed.” be omitted.

The committee divided

Ayes 4 [Corrigan, Fazio, Pearce, Saliba] Noes 2 [Chesterfield-Evans, Gardiner]

Agreed to.

Amended executive summary, put and agreed to.

Paragraphs 1.1 – 1.7, put and agreed to.

Paragraph 1.8, proposed.

Upon which Dr Chesterfield-Evans moved:

That the paragraph be amended by the addition of the following words-

“Some members of the Committee were concerned that the terms of reference of the inquiry were too narrow and overlooked a number of significant problems with democracy in NSW. These were:

Minutes

- The gerrymander inherent in single member electorates in the lower house. This has the effect that it gives the major parties a far higher percentage of the seats than they received in primary votes. There was also concern that the voting system can give a party control of a majority of seats in the lower house, when it had not had a majority of votes. This, combined with strong party discipline undermined democracy by giving effective control of the lower house to a caucus and the Executive, which was not visible or transparent to the voters; and
- The removal of ticket voting in the upper house also required a specific term of reference as the question of whether the tightening of party registration would have been enough to stop the 'tablecloth ballot paper' of 1999 being repeated, when a party was elected with just 0.2% of the primary vote. If so, there was a public interest in having party tickets so that bona fide small parties could preference like-minded parties and give a voice to minority points of view and have a more broadly-based and representative upper house.

These committee members were of the opinion that these two important failures of democracy in NSW are of more practical significance than whether minor changes such as the removal of random sampling and institution of the weighted Gregory method of counting was used in the upper house. As such, it should have been the subject of scrutiny by this Committee, in that the Committee should be responsible for an examination of the working of democracy in NSW in a broad context."

Question put—That the amendment be agreed to-

The committee divided

Ayes 1 [Chesterfield-Evans] Noes 5 [Corrigan, Fazio, Gardiner, Pearce, Saliba]

Negatived.

Paragraph 1.8, again proposed, put and agreed to.

Paragraphs 1.9 – 1.12, put and agreed to.

Paragraphs 2.1 – 2.3, put and agreed to.

Paragraph 2.4, amended, put and agreed to.

Paragraphs 2.5 – 2.10, put and agreed to.

Recommendation 1, amended, put and agreed to.

Paragraphs 2.11 – 2.18, put and agreed to.

Paragraph 2.19, put-

The committee divided

Ayes 2 [Chesterfield-Evans, Gardiner] Noes 4 [Corrigan, Fazio, Pearce, Saliba]

Negatived.

Paragraphs 2.20 – 2.32, put and agreed to.

Paragraph 2.33, amended, put and agreed to.

Paragraphs 2.34 and 2.35, put and agreed to.

Paragraph 2.36, amended, put and agreed to.

Paragraph 2.37, amended and again proposed.

Upon which Dr Chesterfield-Evans moved:

That the paragraph be further amended by omitting the words "partisan and non-partisan" and inserting instead the words "non-partisan and party-political".

Question put—That the amendment be agreed to-

The committee divided

Ayes 1 [Chesterfield-Evans] Noes 5 [Corrigan, Fazio, Gardiner, Pearce, Saliba]

Negatived.

Paragraph 2.37, again proposed, put and agreed to.

Paragraph 2.38, amended, put and agreed to.

Upon which Dr Chesterfield-Evans moved:

That a new recommendation 4 be added, as follows:

“Recommendation 4: That the SEO as part of political education keep a voting record of the parties at divisions by issue.

(This is major source of controversy in many party political advertisements, and a convenient reference is needed for those who wish to see what party’s record is on issues).”

Question put—That the amendment be agreed to-

The committee divided

Ayes 1 [Chesterfield-Evans] Noes 5 [Corrigan, Fazio, Gardiner, Pearce, Saliba]

Negatived.

Upon which Dr Chesterfield-Evans moved:

That a new paragraph 2.39 be added, as follows:

“2.39 The Committee notes that ‘political education’ as done by political parties is considerably different from ‘electoral education’ as done by the SEO, (hence the change in the heading of this section from ‘Political Education’ to Electoral Education’). However, the Committee notes that political education by political parties such as the ‘just vote one’ campaign in an optional preferential may swamp the SEO’s educational efforts. The Committee therefore is concerned that ‘political education’ by parties not swamp the SEO’s non-partisan efforts and that this issue and the relative resources of ‘political education’ and ‘electoral education’ be monitored thoroughly.”

Question put—That the amendment be agreed to-

The committee divided

Ayes 1 [Chesterfield-Evans] Noes 5 [Corrigan, Fazio, Gardiner, Pearce, Saliba]

Negatived.

Paragraphs 3.1 – 3.13, put and agreed to.

Recommendation 5, reconsidered and amended, put and agreed to.

Paragraphs 3.14 – 3.42, put and agreed to.

Recommendation 7, reconsidered and proposed.

Upon which Dr Chesterfield-Evans moved:

That the recommendation be amended by adding the following words:

“ and it is suggested The Cabinet Office attempt to get a national standard.”

Question put—That the amendment be agreed to-

The committee divided

Ayes 1 [Chesterfield-Evans] Noes 5 [Corrigan, Fazio, Gardiner, Pearce, Saliba]

Negatived.

Recommendation 7, again proposed, put and agreed to.

Paragraphs 3.43 – 3.55, put and agreed to.

Recommendation 8, reconsidered and proposed.

Upon which Ms Fazio moved:

That the recommendation be amended by adding the following words:

“ and also consider abolishing booths in remote areas with less than 100 voters; develop criteria for a minimum number of voters to make a booth viable; and encourage voters who utilised these booths to become registered general postal voters.”

Question put—That the amendment be agreed to-

The committee divided

Ayes 4 [Corrigan, Fazio, Pearce, Saliba] Noes 2 [Chesterfield-Evans, Gardiner]

Agreed to.

Recommendation 8, amended, put and agreed to.

Paragraph 3.56 – 3.59, put and agreed to.

Paragraph 3.60, proposed.

Upon which Dr Chesterfield-Evans moved:

Minutes

That the paragraph be amended by adding the following words:

“However, the visiting members of the Committee were shown the Irish e-voting machine and noted that one of its effects was to lower the number of informal votes, as the machine prompts for a formal vote and gives instructions on how to do this. It could replace the Ballot Paper Entry System as described in Chapter 4. The Commission is about to release a final report. The Interim Report and the First Report are available on www.cev.ie/hlm/report/index.htm as will the final report.”

Question put—That the amendment be agreed to-

The committee divided

Ayes 1 [Chesterfield-Evans] Noes 5 [Corrigan, Fazio, Gardiner, Pearce, Saliba]

Negatived.

Paragraph 3.60, again proposed, put and agreed to.

Paragraph 3.61 – 3.91, put and agreed to.

Recommendation 12, proposed.

Upon which Dr Chesterfield-Evans moved:

That the recommendation be amended by adding the following words:

“and displayed electronically on the web for the duration of the campaign as far as is possible. Political parties should supply their material to the SEO in a standard electronic format as specified by the SEO, such formats to take into account commonly used formats at the time. (This would help considerably with enforcement of Recommendations 19 and 20)”.

Question put—That the amendment be agreed to-

The committee divided

Ayes 1 [Chesterfield-Evans] Noes 5 [Corrigan, Fazio, Gardiner, Pearce, Saliba]

Negatived.

Recommendation 12, again proposed.

Upon which Ms Fazio moved:

That the recommendation be amended by omitting the words “from the time such material has been registered” and inserting instead the words “on election day”.

Question put—That the amendment be agreed to-

The committee divided

Ayes 4 [Corrigan, Fazio, Pearce, Saliba] Noes 2 [Chesterfield-Evans, Gardiner]

Agreed to.

Recommendation 12, amended, put and agreed to.

Paragraph 3.92 – 3.100, put and agreed to.

Paragraph 3.101, proposed.

Upon which Ms Gardiner moved:

That the paragraph be amended by omitting all words after “The Committee” where first occurring and adding the following words:

“...acknowledges cross party endorsement should be allowed.

Upon which Dr Chesterfield-Evans further moved that the proposed amendment be amended by the addition of the following words:

“The candidate so endorsed must notify the SEO in writing of their acceptance of the endorsement”.

Question put—That the amendment to the amendment be agreed to-

The committee divided

Ayes 2 [Chesterfield-Evans, Gardiner] Noes 4 [Corrigan, Fazio, Pearce, Saliba]

Negatived.

Ms Gardiner’s amendment again proposed and put-

The committee divided

Ayes 2 [Chesterfield-Evans, Gardiner] Noes 4 [Corrigan, Fazio, Pearce, Saliba]
Negatived.

Paragraph 3.101, again proposed and put.

The committee divided

Ayes 2 [Chesterfield-Evans, Gardiner] Noes 4 [Corrigan, Fazio, Pearce, Saliba]
Negatived.

Paragraphs 3.102 – 3.106, put.

The committee divided

Ayes 2 [Chesterfield-Evans, Gardiner] Noes 4 [Corrigan, Fazio, Pearce, Saliba]
Negatived.

Paragraphs 3.107 – 3.129, put and agreed to.

Recommendation 18, amended, put and agreed to.

Paragraphs 3.130 – 3.200, put and agreed to.

Paragraphs 4.1 – 4.69, put and agreed to.

Paragraphs 5.1 – 5.18, put and agreed to.

Recommendation 33, proposed.

Upon which Ms Fazio moved:

That the recommendation be amended by omitting the words “in conjunction with the 2007 General Election”.

Question put—That the amendment be agreed to-

The committee divided

Ayes 5 [Corrigan, Fazio, Gardiner, Pearce, Saliba] Noes 1 [Chesterfield-Evans]
Agreed to.

Recommendation 33, amended, put and agreed to.

Paragraphs 5.19 – 5.32, put and agreed to.

Recommendation 34, amended, put and agreed to.

Paragraphs 5.33 – 5.61, put and agreed to.

Paragraph 5.62, proposed.

Upon which Dr Chesterfield-Evans moved:

That the paragraph be amended by adding the following words:

“Some members of the Committee were of the opinion that the new party registration system has eliminated the problem of preferences from small bogus parties using catchy names to collect preferences, but that the preferences submitted by the parties should be re-implemented. As the Democrat submission commented:

‘Federal and State voting procedures should be as consistent as possible, with preferential voting and upper house tickets re-introduced in NSW.’”.

Question put—That the amendment be agreed to-

The committee divided

Ayes 1 [Chesterfield-Evans] Noes 5 [Corrigan, Fazio, Gardiner, Pearce, Saliba]
Negatived.

Paragraph 5.62, again proposed, put and agreed to.

Paragraph 5.63, proposed.

Upon which Dr Chesterfield-Evans moved:

That the paragraph be amended by adding the following words:

“The Committee notes that a minor party with a primary vote sufficient to ensure its election may benefit from the elimination of smaller rivals in that it will have a more certain grasp on the balance of power.”.

Question put—That the amendment be agreed to-

Minutes

The committee divided

Ayes 1 [Chesterfield-Evans] Noes 5 [Corrigan, Fazio, Gardiner, Pearce, Saliba]

Negatived.

Paragraph 5.63, again proposed, put and agreed to.

Paragraphs 5.64, put and agreed to.

Paragraph 5.65, proposed.

Upon which Dr Chesterfield-Evans moved:

That the paragraph be amended by omitting the words “...has effectively given the control of the election of members of the Legislative Council back to the voters” and adding instead the following words:

“have given the appearance of giving control of the election of members of the Legislative Council back to the voters from the party organisations. In reality, it has created yet another gerrymander where the larger parties negate the preferences of the smaller parties which exhaust and so remove their ability to choose genuinely like-minded parties so that a voice consistent with theirs can be heard and participate in the legislation-making process. It has also created the ridiculous situation that many parties have to stand far more candidates than they could ever get elected in practice”.

Question put—That the amendment be agreed to-

The committee divided

Ayes 1 [Chesterfield-Evans] Noes 5 [Corrigan, Fazio, Gardiner, Pearce, Saliba]

Negatived.

Paragraph 5.65, again proposed, put and agreed to.

Paragraphs 5.66 – 5.69, put and agreed to.

Paragraph 5.70, proposed.

Upon which Dr Chesterfield-Evans moved:

That the paragraph be amended by omitting the words “The Committee does not see that there is any reason to change the current system of voting above the line. It is...” and adding instead the following words:

“The majority of the Committee do not see any reason to change the current system of voting above the line. They are...”.

Question put—That the amendment be agreed to-

The committee divided

Ayes 1 [Chesterfield-Evans] Noes 5 [Corrigan, Fazio, Gardiner, Pearce, Saliba]

Negatived.

Paragraph 5.70, again proposed.

Upon which Dr Chesterfield-Evans moved:

That the paragraph be amended by omitting the words “The Committee also considers that the method of voting above the line is extremely popular with voters with only 1.84% of voters choosing to vote below the line.” and adding instead the following words:

“The influence of the bigger parties has increased considerably as they will benefit from the exhausting of the minor party votes and it is likely that the new system has created a gerrymander where the major parties will get a greater percentage of the seats than they got of the votes and this will be more pronounced since the 2003 amendments.”.

Question put—That the amendment be agreed to-

The committee divided

Ayes 1 [Chesterfield-Evans] Noes 5 [Corrigan, Fazio, Gardiner, Pearce, Saliba]

Negatived.

Paragraph 5.70, again proposed, put and agreed to.

Paragraphs 5.71 – 5.72, put and agreed to.

Paragraph 5.73, proposed.

Upon which Dr Chesterfield-Evans moved:

That the paragraph be amended by adding the following words:

“Some members of the Committee do not support optional preferential and believe that in the interests of simplicity the preferential system should be similar to the Federal system with party tickets lodged and above the line voting allowing these preferences to be carried forward.”.

Question put—That the amendment be agreed to-

The committee divided

Ayes 2 [Chesterfield-Evans, Gardiner] Noes 4 [Corrigan, Fazio, Pearce, Saliba]

Negatived.

Paragraph 5.70, again proposed, put and agreed to.

Consideration of the revised draft report concluded.

Resolved, on the motion of Mr Pearce, seconded by Mr Corrigan:

That the revised draft report be adopted as the report of the committee, signed by the Chairman and tabled.

The committee adjourned at 3.40 pm until 1.15 pm on Thursday 13 October 2005.

Chairman

Committee Manager

Appendix Seven – Briefing note prepared by the SEO on Maintaining the currency and integrity of the Electoral Roll

To: Joint Standing Committee on Electoral Matters

From: Colin Barry, Electoral Commissioner

Date: 7 April 2005

Subject: Maintaining the currency and integrity of the Electoral Roll

File No.: SEO 96/437

PURPOSE:

To brief the NSW Joint Standing Committee on Electoral Matters on the Commonwealth/State Arrangement for a Joint Electoral Roll in New South Wales, particularly concerning the practices of the Australian Electoral Commission in maintaining the currency and integrity of the electoral roll.

JOINT ELECTORAL ROLL ARRANGEMENT

Pursuant to s.84 of the Commonwealth *Electoral Act 1918* (the Cth Act), the Governor-General may arrange with the Governor of a State for the joint preparation, alteration or revision of the electoral rolls in any manner consistent with the Cth Act.

The *Parliamentary Electorates and Elections Act 1912* (NSW) (the NSW Act) states at s. 21B that the NSW Governor may arrange with the Governor-General for the preparation, alteration, and revision of rolls of electors for State elections in any manner consistent with the provisions of the NSW Act, jointly by the State of New South Wales and the Commonwealth to the intent that the rolls may be used as Electoral rolls for Commonwealth elections as well as for State elections and for such other purposes determined by the Governor.

In 1996, the Governor-General and the Governor of NSW signed a Joint Roll Arrangement that stated that the electoral roll will be prepared, maintained and revised as necessary by the Commonwealth for NSW and will be used for Commonwealth elections; elections for the Legislative Council and Legislative Assembly in NSW; elections for councils of local government areas of NSW; and in the conduct of referendums. The direct costs of the preparation, maintenance and revision of the electoral roll are shared equally between the Commonwealth and NSW.

The Joint Roll Arrangement states that the electoral roll shall contain all matters required by the electoral laws of the Commonwealth and NSW and matters that are authorised by those laws, such as footnotes, references and/or distinguishing marks for any purpose in connection with the electoral roll.

AEC ROLL MANAGEMENT PROCESSES

The Australian Electoral Commission (AEC) has statutory responsibility under the Cth Act to maintain the Commonwealth electoral rolls. In addition, by virtue of the Joint Roll Arrangement, the AEC has a responsibility to the State and Territory electoral authorities, as well as stakeholders such as members of parliament, political parties, election candidates and the voting public in relation to roll management and maintenance. The AEC advises that the maintenance of the electoral roll is not outsourced; it is kept by the AEC under strict security. Where the AEC (like any government agency) uses a contractor to assist in this function (eg printing rolls for polling places), strict contractual obligations apply, including severe penalties for misuse of enrolment information.

The major developments that have occurred in the area of management of the integrity and currency of the electoral rolls since the establishment of the AEC in 1984 include: the establishment and ongoing development of a computerised roll management system (RMANS); the ongoing development of an Address Register within RMANS that enables verification of enrolments down to address level; and replacing two-yearly Electoral Roll Reviews (ERR) with Continuous Roll Update (CRU), whereby data matching with Commonwealth and State data, and data mining of the roll, are applied to identify newly qualified persons and movements of electors.

The computerised roll management system (RMANS) and the address register

The electoral rolls are stored on RMANS, which is maintained by the AEC. Every [AEC divisional office](#) has the Commonwealth electoral roll for their State or Territory in electronic format for viewing by the general public. In addition, an Australia wide electronic version of the electoral roll is available for viewing at every [AEC State Head Office](#), [ACT Divisional Office](#) and the [Central Office](#) in Canberra. The electoral roll is available to the public pursuant to s.90A of the Cth Act. The AEC advises that updating of the on-line roll occurs daily.

The AEC website also enables the public to verify their enrolment details on-line and to download an enrolment form for completion and mailing to the AEC. When the enrolment form has been received and processed, the AEC sends the elector an acknowledgment card. The card provides advice of the name of the relevant Federal electoral division and the State/Territory electorate and local government area. The card constitutes a confirmation of enrolment for the elector and the opportunity to correct any mistakes in the personal details on the card. The enrolment forms are processed on-line by Divisional staff, as are other enrolment update processes, such as deletions resulting from deaths and objections for non-residence or other reasons. Note that under the Cth Act (s.99(1)) and the NSW Act (s. 33(2))

a person has to have lived in a subdivision (NSW) or an address in a subdivision (Cth) for 2 months before they can be enrolled for that subdivision/address.

In accordance with s. 30 of the NSW Act, copies of the latest print of the electoral roll for any district is open for public inspection in hard copy without fee at the State Electoral Office's front reception area during office hours.

In addition, the AEC maintains an address register within RMANS in order that each elector's address can be identified to a specific validated parcel of land. The AEC collects and maintains information on the various types of addresses and their uses, and maintains enrolment history links where addresses have changed type and description.

Electoral Roll Review (ERR) and the Continuous Roll Update (CRU)

Pursuant to s.92(2) of the Cth Act, the Electoral Commission must cause reviews to be conducted of the electoral roll, with a view to ascertaining such information as is required for the preparation, maintenance and revision of the electoral roll. Up until 1998, the AEC conducted ERRs that consisted of a nation-wide door knock about every two years to check that people were correctly enrolled. In 1999, the AEC adopted a new methodology for updating the roll, moving from habitation reviews, or doorknocking, to computer-based CRU. CRU entails the updating of the electoral roll on a continuous basis through a number of means, including:

data matching - information is received from external sources covering change of address or data about persons who are eligible but not enrolled. These data are matched with the electoral rolls to determine if an enrolment change has already been received for the person or enrolment activity has been recorded at the address. Examples of data used in data matching are Australia Post Redirection Advices, Centrelink Change of Address Advices and some State Motor Transport data on new licences;

data mining - in the past 2 years a Monthly Mail Review System has been implemented. This system allows for a single monthly mailout to addresses identified by:

external data on both potential electors and current electors who appear to have moved address without updating their enrolment (change of address data).

internal address data that is extracted from RMANS where:

no electors are currently enrolled (vacant)

electors in different surname groups are enrolled

enrolment limits appear to have been exceeded

outward enrolment activity has occurred (former enrolled address review)

no enrolment review has been conducted for a specified timeframe.

The AEC advises that in the last financial year, the AEC mailed over 4 million letters reminding electors to update their enrolment details. In many instances, where no response was received to the first letter, a second letter was mailed. Fieldwork, including door knocks, was also undertaken at addresses where there had been no response to the mailing; and

targeted reviews – inquiries are directed to specific addresses or specific groups of electors who may be under-enrolled or difficult to contact. This may involve doorknocking at addresses from which there has been no response to previous mail contact.

The AEC advises that to encourage enrolment by newly eligible persons, staff also attend citizenship ceremonies to collect enrolment forms and, with the AEC's Joint Roll partners, undertake enrolment stimulation activity targeted at young people and people on the move.

Other key roll management practices

Close of Rolls

When a Federal election is announced, people have seven days from the issue of the Writ to ensure that they are correctly enrolled before the 'close of rolls'. A person will be entitled to vote at the election if his or her name is on the electoral roll at the close of rolls. An application for enrolment lodged with any AEC office by 8pm on the last day before the roll is closed for an election is regarded as having been lodged in time for the purposes of that election. However, in NSW State elections, the electoral roll closes at 6pm on the day of issue of the writ calling the election. This means that enrolment forms must be completed, returned and received by 6.00pm on the day of the issue of writs at the office of AEC Divisional Returning Officers.

In the event that an application for enrolment is received after that time, the applicant will be sent an interim acknowledgement letter indicating that the enrolment form was received after the close of rolls and that the applicant will not appear on the electoral roll until after polling day and consequently will not be able to vote in the upcoming election. However, if the applicant is currently on the electoral roll for the address referred to in the enrolment form or for another address due to a previous enrolment, the applicant is entitled to vote in respect of that enrolment. In this situation, the Cth Act does not require the elector to have lived in the address for which they are enrolled in the previous three months. However, the NSW Act requires that the person can only vote at the address for which they are enrolled if they have lived in a residence in the same subdivision of the relevant electoral district and/or they have lived in the place indicated on the electoral roll in the three months prior to polling day (see ss.99 and 20(6)).

In both State and Federal elections, in the event the enrolment form is submitted after the close of rolls but the enrolment application represents the applicant's first time at making a claim to be enrolled or the applicant is not at present on the roll, the applicant is not entitled to vote at the election. The AEC advises that new enrolment details for applicants whose enrolment applications are received after the close of rolls are added to the computer system in the week following polling day.

When the AEC requires further information from an applicant who has submitted his or her enrolment application *prior* to the close of rolls, and that applicant has then provided satisfactory information *after* the close of rolls but before the polling day, the AEC will process that information and enable the person to vote at the upcoming election. This occurs because the application was received before the close of rolls, even though eligibility was not established until after the close of rolls. The applicant is advised that he or she is eligible for enrolment for the election but that their name will not appear on the roll because their eligibility was not established until after the roll closed. The applicant is advised that he or she should vote using a declaration certificate (an envelope upon which the applicant's residential details are entered and in which their completed ballot papers are placed). The electoral roll is annotated accordingly and a special record maintained to ensure that the declaration vote is accepted.

If the applicant's eligibility to vote is not established after receipt of the additional information, then the applicant is advised that they are not eligible to vote, even for a former address for which they have previously enrolled.

Removing names from the roll

When the AEC receives information that a person is no longer living at their enrolled address, notice is sent to the elector advising that their name will be removed if a satisfactory reply is not received. This information is typically received through the Continuous Roll Update process of data matching with data from Australia Post, Centrelink and other government agencies. The AEC advises that each year approximately 2% of all electors are removed by this process. Other grounds for removing names from the roll are that the elector is not entitled on citizenship grounds. Any elector may lodge a 'private objection' if they consider that another elector is not entitled to enrolment.

Death Deletions

Pursuant to s.108 of the Cth Act, the State Registrar of Births, Deaths and Marriages advises the AEC of any recently deceased persons. The AEC then removes these people from the electoral roll. The AEC advises that each year over 100,000 death deletions are made to the roll, and in the period immediately prior to elections this activity is carried out on a daily basis.

Deletions on the basis of criminal conviction

Pursuant to s.109 of the Cth Act, the Controller-General of Prisons must forward to the AEC, as soon as practicable after the beginning of each month, a list of the names, addresses, occupations, and sexes of all persons who during the preceding month have been convicted in the State and are serving a sentence of 3 years or longer for any offence so that they can be removed from the electoral roll. It should be noted that the NSW Act states at s.41(2)(a) that the Corrective Services Commission of New South Wales shall forward details of any person of the age of 17 years or upwards who is in prison pursuant to being sentenced to a term of imprisonment of *one year or longer* (emphasis added) so that they may be removed from the electoral roll.

Omission from Roll

In the event that a person attends a polling booth to vote and is not identified on the electoral roll, the person is still permitted to vote by completing a declaration certificate. The person is required to enter their residential details onto the certificate (which is an envelope) and they are provided with ballot papers that are inserted into the envelope on completion. The envelope containing the ballot papers is kept separately from other ballot papers and is sent to the relevant divisional officer, when it is determined whether the person is eligible to vote. The person may be found to be eligible to vote on the grounds that they were removed from the roll because of "official error." Alternatively, the person may be advised by letter that the omission from the electoral roll was correct (possibly because the elector had not responded to written requests from the AEC to provide details of electors enrolled at an address).