



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

Reference: Conduct of the 2007 federal election and matters related thereto

TUESDAY, 25 NOVEMBER 2008

CANBERRA

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JOINT STANDING
COMMITTEE ON ELECTORAL MATTERS

Tuesday, 25 November 2008

Members: Mr Melham (*Chair*), Mr Morrison (*Deputy Chair*), Senators Birmingham, Bob Brown, Carol Brown, Hutchins and Ronaldson and Mr Danby, Mr Bruce Scott and Mr Sullivan

Members in attendance: Senators Bob Brown, Hutchins and Ronaldson and Mr Danby, Mr Melham and Mr Sullivan

Terms of reference for the inquiry:

To inquire into and report on:

The conduct of the 2007 federal election and matters related thereto, including the Commonwealth Electoral (Above-the-Line Voting) Amendment Bill 2008, with particular reference to:

- a. the level of donations, income and expenditure received by political parties, associated entities and third parties at recent local, state and federal elections;
- b. the extent to which political fundraising and expenditure by third parties is conducted in concert with registered political parties;
- c. the take up, by whom and by what groups, of current provisions for tax deductibility for political donations as well as other groups with tax deductibility that involve themselves in the political process without disclosing that tax deductible funds are being used;
- d. the provisions of the Act that relate to disclosure and the activities of associated entities, and third parties not covered by the disclosure provisions;
- e. the appropriateness of current levels of public funding provided for political parties and candidates contesting federal elections;
- f. the availability and efficacy of 'free time' provided to political parties in relation to federal elections in print and electronic media at local, state and national levels;
- g. the public funding of candidates whose eligibility is questionable before, during and after an election with the view to ensuring public confidence in the public funding system;
- h. the relationship between public funding and campaign expenditure; and
- i. the harmonisation of state and federal laws that relate to political donations, gifts and expenditure.

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Committee met at 12.38 pm**GRAY, The Hon. Gary, AO, Member for Brand, Commonwealth Parliament**

CHAIR (Mr Melham)—I declare open this public hearing of the Joint Standing Committee on Electoral Matters inquiry into the conduct of the 2007 federal election and related matters. In today's hearing we will hear from three members of parliament who have made submissions to the inquiry. Submissions from members of parliament have canvassed a broad range of issues that were raised at the last federal election, including the ability to effectively campaign in some shopping centres, a need for stronger proof of identity requirements, voting practices in some Indigenous communities and the distribution of unauthorised campaign material. I welcome our first witness, the Hon. Gary Gray. Although the committee does not require you to give evidence on oath, I should advise you that these hearings are legal proceedings of the parliament and therefore they have the same standing as proceedings of the respective houses. We have received a letter from you covering a range of matters. If you want to present any additional matters or make an opening statement to the committee, feel free to do so.

Mr Gray—Thank you. I would like to address the two matters which I raised specifically in my correspondence of May, namely access to shopping centres, but also pre-polling activity, both of which come together in an important way in election campaign logistics and execution. Chair, years ago, when you were first elected to parliament in 1987, the number of people voting pre-poll was a very small proportion of the total voting population; in those days, something less than two per cent across the nation. The figure is now increasing rapidly and in some electorates, such as my own, increasing at a staggering rate. In my electorate of Brand, in the order of 10 per cent of the votes cast at the 2007 election were pre-polls. In effect, the pre-poll has become for a range of people in our voting population simply an early voting facility—one that should be recognised and understood, but one that is important. By my calculation, over one million people voted early in the 2007 election and fewer and fewer people are choosing to vote on election day. There are a range of reasons for this.

In my electorate, early voting is driven by the presence of HMAS *Stirling*, and during the last election campaign we had the sail away of the *Arunta* heading off for service in the Middle East. We also have a very large number of fly-in fly-out workers who principally work in the iron ore mines of the north of Western Australia, but also in other parts of the country, leading to a population demographic that likes and needs access to early voting. In addition, there are the traditional elderly people who prefer to vote without stress and pressure early in an election campaign. My electorate also has an extraordinarily large number of retired people. In my electorate, that older demographic are voting earlier because there is less pressure on them getting to polling booths. This has meant a commensurate reduction in postal votes as older people exercise a right to vote early and comfortably and not to vote using postal votes. So that changed behaviour is something that I believe needs to be understood and formally recognised.

It has a significant implication in a number of electorates in Western Australia where it is not possible for candidates and campaign organisations to get access to Australian Electoral Commission facilities to do something that is common and understood and an accepted part of our election behaviour—indeed, an important cultural part of our election behaviour—and something that both major parties indulge in—that is, the handing out of how-to-vote material. In the electorates of Hasluck and Stirling, where the AEC office is in a privately owned shopping

centre, it has repeatedly not been possible for candidates to staff polling booths at this pre-polling time to hand out how-to-votes. Indeed, the owners of the Karrinyup Shopping Centre, which is in the electorate of Stirling, have a corporate policy of not allowing campaign volunteers to handout how-to-vote information. I believe this is important because it relates to a second issue, which is not secondary—that is, in a democratic society, the right and obligation on candidates: the right to be available to voters and to offer their views to the broader population as well as the obligation which they have to quietly and properly pursue their roles as candidates and to speak to as many people as possible.

So you see there is a logistics issue, which is actual physical access to a polling location during the course of an election campaign, which these days can take two weeks. As I say, in my electorate of Brand, 10 per cent of all votes were pre-poll votes—or early votes, as I will characterise them for this discussion—and the number is increasing across the state. We can expect well over 1.2 million votes at the 2010 election to be early votes. That also means that in order for our elections to work as, culturally, we are used to them working, the handing out of a how-to-vote at a polling station or a polling location is an understood part of that practice, but of the 15 federal divisions in Western Australia, in two of them it is not possible to be present to hand out a how-to-vote. It is my belief that when the Australian Electoral Commission writes its leases with shopping centres, it should pay due attention to the need for all sides of politics—this is not a Labor Party thing, it is not Liberal Party thing, it is not Australian Greens thing; it is my contention that, if you have taken the time and the trouble to be a candidate for election, you have a right to turn up at every polling location and hand out your how-to-vote material to advocate for your vote. There are significant electorates where that is not possible and where that is made not possible because of corporate policies of the landlord. I do not think that is fair.

CHAIR—So there are two out of 15 in Western Australia?

Mr Gray—Yes. I do not know the number nationally, but I have paid particular attention to Western Australia. The divisions are Hasluck and Stirling.

Senator RONALDSON—Gary, there is probably no other way of getting some resolution to this without it being written into leases. If you look at the response from the Shopping Centre Council of Australia, which I did not think was unreasonable, there are different dynamics with a number of shopping centres. I remember, from own experience, some were quite happy and thought it attracted shoppers and others thought you were a damn nuisance. I do not think potentially you are going to get any agreement from the actual members of the Shopping Centre Council in relation to this. Actually, I had not thought of the least aspect, but I do not know if there is any other way of doing it, is there?

Mr Gray—It is an interesting point. We had raised the issue in the Labor Party submission to the joint select committee round following the 1998 election. At that time, we had suggested that the AEC should simply seek agreement from the owners of the premises on which pre-polling centres are located to ensure that there are no unreasonable restrictions placed on the right of persons to distribute the customary election material—namely, how-to-vote information. I think it goes without saying, and you would know this from personal and practical experience of winning and holding a marginal seat in difficult circumstances, that no politician who campaigns in a public thoroughfare, such as a public shopping centre, is going to carry out any activity that will make that person unpopular. The object is quite the opposite; the object is to win a vote. I

simply do not accept the proposition that politicians' presence in shopping centres is anything other than an adornment in the election campaign process because people like to see their candidates. Increasingly, popular coffee shops are carrying out coffee bean polls in shopping centres.

CHAIR—Would you say the issue of the writs is the relevant period?

Mr Gray—Absolutely.

Senator HUTCHINS—Is this something that has crept back in since you left as the national secretary? I am sure you would have dealt with this when you were the national secretary of the ALP. Is this something that has just started to come up again and which needs to be emphasised to the Electoral Commission that they need to be conscious of this? Or is it something that, in your experience, is a state-by-state phenomena rather than a national one?

Mr Gray—That is a great question. I have spoken with past federal directors of the Liberal Party and national secretaries of the Labor Party, and I am assured that for the 2001 election one of the national directors was detailed to speak to the Shopping Centre Council about the issue of access. The campaign overtook the dynamic; the conversation did not take place. My belief is that from that point on the issue became secondary until I guess I was particularly focused on it.

Senator HUTCHINS—So you could not hand out?

Mr Gray—No. My pre-polling facility is in a public area widely accessible and widely accessed by the Labor, Liberal and Green candidates. All three were welcome and worked very well together providing that service for voting populations in two locations in the electorate of Brand.

CHAIR—Isn't that the way to overcome it, then? If it is not a lease arrangement which guarantees access from the time the writs are issued for all candidates, a pre-poll facility could be located outside the shopping centre.

Mr Gray—That may well be an excellent way of dealing with it. Indeed, as I have looked through a number of the arrangements, there is a pre-polling voting centre which often is set up outside the major shopping centre. This can be an ideal solution.

Senator HUTCHINS—In your experience, is it a state-by-state issue or is it a national one?

Mr Gray—It is a corporate policy of some shopping centre owners, some of which have assets in different states.

Mr SULLIVAN—What if there were no how to vote cards? I am sorry I was late so I missed probably the bulk of your presentation. It appears to have been on the basis that shopping centres are denying the right to hand them out. There is a school of thought that says we should dispense with them altogether. I would like your view on that.

Mr Gray—I do not agree with that. I think it is part of the culture and practice. I do think that parties should be more rational in how they print and provide the information. We have in the

past in this forum discussed attaching to polling booth facilities a how to vote card for all political parties so that voters can have a look at which parties are offering what voting list. Over the years the joint committee has rejected that option for a lot of reasons, most of which are good. Political parties do recycle their how to votes and political parties also hand out more than how to vote material on election day. They hand out material about the candidates, about policies, and make a person available for discussion, debate or guidance and absent voting information. It is a presence for substantial political organisations such as the Liberal Party, the Labor Party, the National Party and the Greens to make themselves known in communities. That is a useful thing to be doing.

Senator BOB BROWN—I think you said two booths—

Mr Gray—Two federal divisions.

Senator BOB BROWN—Two divisions have problems with shopping centres which have polling places which prohibit the handing out of how to votes. It would seem that either we do not have how to votes, as is the case in Tasmania, which makes for a very restful polling day, or if we do, that cuts right across the democratic right of everybody both to hand out the cards and to receive them. There are two options here, aren't there. One is to avoid having polling booths in places which prohibit the handing out of how to votes. The other is to make it a legal requirement that how to votes be permitted in such places. Otherwise you put into the hands of discerning private enterprise the most important function in the public arena, which is the election of representatives in a democratic system to the parliament.

Mr Gray—There is a third solution which we have noticed increasing, which is that the location of an Australian Electoral Commission office may well be in a shopping centre which does not allow political party access. However, the pre-polling voting centre may well be located elsewhere which does have access.

CHAIR—But the AEC office still has to issue pre-poll votes during an election period. I know there is one outside the shopping centre but the current requirement requires it. It is minimised if you have got one outside.

Mr DANBY—I am sorry I was late. Had you got examples outside Western Australia of this problem with shopping centres?

Mr Gray—Yes. I thought I would go particularly to the ones that I knew and that I had visited and where I had myself asked if I could hand out how out votes, to be told it was not the corporate policy to do so.

Mr DANBY—That was not just in the pre-poll period, it was on election day.

Mr Gray—My contention is that increasing numbers of people are voting pre-poll, around 10 per cent in my electorate, over a million people at the 2007 election. It is no longer characterised as a pre-poll; in fact, it is an early poll.

CHAIR—But on election day they would be interstate votes.

Mr Gray—Yes, they would be interstate votes, so people could go in to vote but you would not be able to hand out the how to vote to them on election day in those shopping centres.

CHAIR—We will get some information from the Electoral Commission to see how widespread this problem is throughout Australia. Frankly, there should be a national solution to this.

Senator RONALDSON—To clarify, do you have concerns about the level of current pre-poll voting or is it just isolated to the matters you have raised?

Mr Gray—I am not concerned by it, more that the act should acknowledge it and recognise it. We will see at the next election, if the current trend continues, I would estimate over 1.2 million people vote pre-poll. That being the case, it is a significant change to election dynamics and election logistics. In the context of my own electorate, it means that the voting population has increased from some 2,000 people turning up at the polling booths in the 2001 election to 10,000 people turning up to vote in the current election. This has a range of implications.

CHAIR—Thank you very much for your evidence today. You will get a transcript sent to you in due course which you can have a look at. If there is anything else that you want to comment on in terms of the inquiry, please feel free to do so by way of written submission.

Mr Gray—Thank you, Mr Chair.

[12.57 pm]

BAILEY, The Hon. Fran, Member for McEwen, Commonwealth Parliament

CHAIR—I welcome Fran Bailey MP, member for McEwen, to the hearing. Although the committee does not require you to give evidence on oath, I should advise you that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the respective houses. We have received your letter, and if you wish to make any additional submissions feel free to do so. If you want to make an opening statement, please do.

Fran Bailey—Thank you very much, Chair. The two issues that I raised in the letter, and I have got a couple of others that I will raise also with the committee today, were in regard to voter identification and the issue of multiple voting. I would hazard to say that there is probably not a marginal seat member in this house who has not either themselves complained about the issue of multiple voting or certainly their supporters have complained about multiple voting. Previous to the 2007 election I have been guilty of that myself. But in the 2007 election, as the Australian Electoral Commission provided evidence in the Federal Court of Australia in the matter of Mitchell v. Bailey, the AEC actually identified eight cases of double voting. I am aware that in the process of cleansing the rolls after the general election, and the AEC would need to confirm this, the number was greater than eight and I think that is the first time that on this issue of multiple voting evidence has actually been provided by the AEC to the Federal Court.

This morning, I received the permission of one of my constituents, the Reverend Ivor Jones, an Anglican minister living in the small town of Marysville in my electorate, to discuss his case. He received a letter from the AEC post the election asking him to explain why his name had appeared on multiple occasions as a voting on election day. Reverend Jones was not in the electorate of McEwen on election day. He has given me permission to provide you with his name; he is happy to speak further. In fact, on election day he was delivering a lecture at a bible college in Wodonga. He had conducted a pre-poll in the McEwen electorate, and yet this man's name and address had been provided at, I believe, five different places throughout the electorate. So this issue of multiple voting is a real issue. As I said, the AEC has detailed in the Federal Court the eight cases.

Chair, my contention is that if we had voter identity this would—I do not know whether anyone could say that we would eradicate this process, but we would certainly go a long way to eliminating examples of multiple voting. There is a growing trend around the world towards voter identity. I have just recently been in the Maldives as part of an international team overseeing their first multi-party election. In a new democracy like the Maldives, one of the first things that they have implemented is voter identification. I am happy to answer any more questions that you might have on that matter.

I have two other quick matters that I would like to suggest for the committee's consideration. It is now well documented in the case of McEwen that there was an inconsistency in deciding at the DRO level whether a vote was formal or informal. There is also now a body of evidence about the role that scrutineers play. I would like to suggest, through your committee, Chair, that one of the ways that would assist in the process on election night and in the subsequent weeks is

for there to be a handbook for scrutineers. Many scrutineers are not aware of their rights. They are not aware of that their presence is meant to be in place at the opening of all ballots, whether they are pre-poll, absentee, or what ever the type of ballot.

CHAIR—I was under the understanding that AEC produced a scrutineers handbook. My recollection is that it is produced at every election and picks up the changes.

Fran Bailey—As of yesterday, I tried to discover a copy of it and I am still unable to.

CHAIR—We will make sure you get a copy.

Fran Bailey—It is not so much me; it is the scrutineers.

CHAIR—My understanding is that it is part of a package that is given to candidates when their nominations disclosed publicly. There is a package that is given to them and that includes the candidate's responsibilities and the scrutineers handbook—and then you obviously have to get multiple copies. But we will follow that up and clarify that. I do not want to detract from what you are saying.

Fran Bailey—If such a handbook does exist, it is in the committee's interest to discover exactly what is contained in the handbook. Does it, for example, deal with the number of issues that were raised in the Mitchell versus Bailey case?

CHAIR—I am not scrutineering in federal elections obviously, but I know what goes on. My recollection is that there are examples of formality that help scrutineers when they come to challenge. But we will go and get a copy. I understand there is a copy around, so we will have a look at that. That is fine, we take on board what you say and we will clarify that. Was there another issue? I am sorry, I cut across you.

Mr DANBY—Can we still go back and ask questions about the first lot?

CHAIR—Yes, but she has not finished; I just cut across her.

Fran Bailey—I would raise one other issue—that is, the issue of absentee voting. In the last election, for example, there were over 2,000 absentee votes cast at one polling booth. McEwen returned more than twice the state average for absentee votes. I think that this is a very fertile area for your committee to look into much further.

CHAIR—What we are looking at is changing the nature of pre-poll votes to ordinary votes. That is the suggestion that has come from the Liberal Party, and that has been picked up by most people—that is, making it so that maybe the pre-poll and postal votes can be done by anyone who is outside the electorate on election day, which would then fix that up. In terms of absentee votes, my understanding is that most absentee votes are done by an adjoining electorate, where people are just outside particular electorates. So those ones would not be picked up, but it is an issue we are looking at.

Fran Bailey—If I could just make a final point in regard to the absentee votes, again, if you have voter identification, this would negate a lot of the queries that people like me have about the numbers of absentee votes.

CHAIR—Okay. I have a few issues, but I will leave those until others have their say.

Mr DANBY—Mrs Bailey, I was just a bit confused with two things that you mentioned. The eight cases that are before the AEC regarding McEwen and the five instances of double voting that you say involve Reverend Ivor Jones: are the five included in the eight, or are they totally separate?

Fran Bailey—I cannot answer that question. The AEC referred to eight cases of dual voting. I should add one other aspect to the question of Reverend Ivor Jones. When he contacted the AEC, he was told by an AEC official that possibly he is an old man who could not remember voting on more than one occasion. The Reverend Ivor Jones is the most erudite man, is extremely well-regarded in his community. There is nothing doddering about him whatsoever, and he has a very clear recollection of his pre-poll vote and where he was on election day.

Mr DANBY—Fair enough, and there should be no excuses for AEC officials making silly comments like that to reverends, gentlemen or anyone.

Fran Bailey—Exactly.

Mr DANBY—I suppose I was trying to clear up that difference because I am sure you are aware that because we do not have electoral officials with computer terminals in front of them so that they can count people off the roll as they vote at either pre-poll or on polling day, we often have the situation where someone, with a big crowd in front of them, crosses off the wrong name of people in the same family. In previous reports of this committee over previous years, the Electoral Commission has reported to us that there are some hundreds of cases—often electorate by electorate—where people are thought to have been double voting or, in this case quintuple voting, but when they get to the bottom of it, they often find that the son was counted when the father should have been, the brother voted at another booth. This will always happen while we do not have every electoral official with a computer terminal in front of them and then eliminating that person as having voted at the actual time that they vote so that they cannot do it in any other booth within the electorate.

Fran Bailey—Yes.

Mr DANBY—So you are proposing I suppose that, at election time and at pre-poll, electoral officials have a computer terminal—

Fran Bailey—Exactly.

Mr DANBY—with the electoral roll in front of them.

Fran Bailey—Yes.

Mr DANBY—That is a very expensive ask.

Fran Bailey—It may be but the votes cast surely underpin our very democracy. If I can refer back to those eight cases of dual voting—and the AEC will confirm, originally when they were cleansing of the role, as I am led to believe, many more cases than that—perhaps they did reach, on investigating, the conclusions that you have just suggested. But the fact that they actually provided that as evidence within the Federal Court, they could offer no explanation for those eight cases. I have given you an actual example of the Reverend Ivor Jones.

Mr DANBY—We should actually get those eight cases.

CHAIR—Can I just come in on that, just to assist. I have been provided with some notes that say that on 21 October 2008—this is on page 8 of the Senate finance and public administration committee's estimates hearing transcript—a Mr Pirani advised the committee:

In relation to McEwen, in the court case eight dual voters were mentioned. Those eight were referred to the Australian electoral officer. I have reviewed them, and we have one of those where there is some evidence to support a matter, but it is likely that it will not be sent to the AFP and the person will be issued with a warning letter. The other matters were either people who were confused or people who were aged and their families et cetera had assisted them in voting.

That is on page 8 of the transcript.

Fran Bailey—What I am saying to you is that the Reverend Ivor Jones was not confused.

CHAIR—He might not be, and I will come to that a bit later on.

Senator RONALDSON—Chair, what are you actually saying?

CHAIR—What I am saying is this: it is not necessarily as widespread as Ms Bailey is saying. We have had subsequent evidence. That is not the only time. In 2001 there was evidence before this committee that 138 matters had been referred to the AFP across Australia and the AFP rejected 133. There were five referred by the AFP to the DPP. So there were those matters there. In 1998, 263 were referred to the AFP. They rejected 234—

Senator RONALDSON—This is Australia wide?

CHAIR—Australia wide. 234 were rejected and 28 were referred to the DPP for prosecution. So there is a limited number of them. In terms of the fear of it being widespread and systematic, there has never been—

Fran Bailey—I have restricted my comments to McEwen.

CHAIR—No, I understand that.

Fran Bailey—It is only when you get, I would suggest to the committee, when you get such a very close result, as in McEwen, that this problem becomes highlighted, because there actually could be the potential to change the outcome because of multiple voting.

CHAIR—We will come to that. I suppose that is my concern. In this instance there were eight. The subsequent evidence before a Senate committee was that one only could have been

referred. What I am worried about is that, as a result of that, there have been provisions put into the Electoral Act that have actually disqualified hundreds of thousands of voters.

When you actually come to McEwen, you find that there were a number of people who did not get admitted because they did not pass the proof of identity test in relation to provisional votes; you had a number of others who were knocked out on the basis of changes to enrolment procedures where previously, if they had moved within an electorate, they would have been included in the count. They were knocked out. As far as McEwen is concerned, 518 provisional voters were prevented from exercising their franchise in 2007, despite attempting to go to a polling place and doing so. Indeed, another 1,845 are electors who were notated as being British subjects who are still getting the right to vote but they have not taken the next step and taken out citizenship.

Senator RONALDSON—But, with the greatest of respect, Chair, Ms Bailey is talking about a clear instance of multiple voting in her electorate and the impact that that potentially has on the outcome of an election. Quite frankly, the other matters are matters that this committee will discuss. I do not think you can equate numbers on that basis and then put relative merit onto the argument.

CHAIR—The point I am making is that I am not disputing the impact of multiple voters on close results. I do not dispute any of that. What I am worried about is that going to the next level of identification, of proof of identity for voters, will invariably lead to more people being disqualified from the count. That is all. That is where the correlation is. I am wondering whether we are using a sledgehammer to crack a walnut. That is the basis of it. I am not disputing the facts.

Senator RONALDSON—If someone lost the seat by four votes and there was a multiple voting of seven I would not think they would consider it cracking a walnut.

CHAIR—If you get multiple voting and you can prove it you get a new ballot. The remedy is a new ballot, if multiple voting exceeds the margin.

Senator RONALDSON—But if there are ways, as has been suggested by Ms Bailey, I think that might be a far cheaper outcome than a new election.

Fran Bailey—My argument is that, if you have voter identity you are going to eliminate a lot of these problems. You will certainly eliminate as far as possible multiple voting. And surely it is incumbent upon Australian citizens—the right to vote is something very precious and I think that with the right information, if people have got their identity, that is their passport to their vote and their vote is sacrosanct.

Mr DANBY—The point was that the system that they had in the 2004 election was different. I do not dispute your point about multiple voting. The way to avoid that is to have computer terminals with each electoral officer, where they eliminate the person who is actually voting from the roll after they have done it and then there can be no debate about that person being counted again, because the electoral officials that every other booth will have them taken off at the same time. It is very expensive, but it can be done, and I think that is a way of crossing the political lines of how this issue ought to be dealt with.

There is a separate issue, Senator Ronaldson, of the increase in the number of provisional votes being eliminated from the role in 2007 compared with 2004 and 2001.

Fran Bailey—Has anyone investigated the cost? Most of the polling places at schools. The technology is there. With each election the AEC—and I think rightly so—attempts to reduce the number of polling places. For example, I have still got in my very diverse electorate some very, very small polling places. Maybe we are going to have to have larger polling places so that we can have the technology. The world is passing us by with this.

Mr DANBY—Maybe the technology will become so cheap that we can do it with not as big a cost.

Fran Bailey—That may happen too.

Senator BOB BROWN—Thank you, Ms Bailey. At the outset you said, ‘I, myself, in the past have been guilty of something.’ What was that?

Fran Bailey—Anyone in a marginal seat where it is a very tight result think, ‘Has my opposition got multiple people out there voting?’ There is a bit of folklore amongst marginal seat holders. Senators do not have to—

CHAIR—It is called paranoia.

Fran Bailey—It is a very healthy dose of paranoia amongst marginal seat holders. Senators do not usually have to worry about that.

Senator BOB BROWN—The last Senate seat is always very close. Anyway, that is good. I must say I had a very dear friend, Ivor Jones, but he passed away before the last election, so he cannot be guilty of being part of it.

Fran Bailey—It is certainly not the same one.

Senator BOB BROWN—The problem will be that there may be even a larger number of people who, on the day, cannot produce identity.

CHAIR—Exactly.

Senator BOB BROWN—Would you not allow them to vote?

Fran Bailey—I think it depends on what you will accept as identity. Some people have said that it is unreasonable to expect, for example, a very old person who does not drive a vehicle anymore to have a drivers licence. They are not going to have a drivers licence but they will have some form of identity. It is what we decide will be a suitable method of identity.

Senator BOB BROWN—It is worse than I thought. We have had evidence that homeless people very often would not be able to produce identity. This does become a problem, doesn’t it? They should have the right to vote and yet they must be able to be ticked off on the voting system as having voted, if they do vote.

Fran Bailey—I hear what you say. But we have to be able to protect the integrity of the system that underpins our democracy. I think that is what is at issue.

Senator BOB BROWN—While providing everybody with their right to vote.

Fran Bailey—We have to make sure that we enable everyone to have that right.

Senator BOB BROWN—Just on the eight votes for Reverend Ivor Jones, I presume they have eliminated the fact that there could have been other Ivor Joneses on the electoral roll that were inadvertently at different addresses. So the presumption—

Fran Bailey—I am probably not the one to answer that. Probably the AEC is the one to answer it. The fact is that this involves a well-respected man who can absolutely prove where he was. This is a proven case of multiple voting.

Senator BOB BROWN—It does raise the prospect that somebody knew where he was and took advantage of that information.

Fran Bailey—I could not speculate. I do not know how people with that sort of mentality operate.

CHAIR—How do you prevent that happening, even if you introduce the changes that you recommend?

Fran Bailey—If a person has to at least provide some ID, that is going to be a deterrent to people rocking up to a polling booth and claiming they are Mr Jones.

CHAIR—Things get duplicated all the time. If someone is hell-bent on creating a fraud at election time, they can produce documentation if they know that people are away.

Fran Bailey—The issue is making sure that people are who they say they are.

CHAIR—Sure. I accept that.

Mr SULLIVAN—Ms Bailey, I have a couple of quick questions and then I want to talk to you about your remarks on absentee votes. The first one is on voter ID. I support you entirely on that. I have said before in the hearings of this committee that I give the local bowls club, who provide me with a photo ID, as much detail as I am required to give the Australian Electoral Commission. If I am prepared to trust those details to the local bowls club, I feel quietly confident that I can trust those details to the AEC. So I think you make a good point there.

On the issue of multiple voting, have you ever considered the prospect that you may have been the beneficiary of those five votes?

Fran Bailey—This is the problem: you will never know. This is the problem that the Federal Court faced. You have no way of knowing who the votes were for. As it turned out in my case in McEwen, the eight cases of dual voting were not going to affect the outcome. But if the total of votes had been what the original total was, there would always be a question mark over the

outcome. It would not matter who the person was fulfilling the role as the member for McEwen, I do not think anyone would want to operate with a question mark like that over their candidature.

Mr SULLIVAN—I agree. It is a personal view. Another question that I want to pursue with you is that of absentee votes. I think you indicated that the number had more than doubled—

Fran Bailey—It was more than twice the average for Victoria.

Mr SULLIVAN—They are probably the one group of votes that you can be pretty much assured are genuine in the sense that people have to complete a form, attach a signature to it and then that signature is matched to the signature on their original enrolment form. So all of those are dead-set, honest-to-God, genuine voters or people who are good forgers. None of them were multiple. Every one of those—

Fran Bailey—We do not know that, actually.

Mr SULLIVAN—Yes, we do.

Fran Bailey—With the absentee votes?

Mr SULLIVAN—Yes. We have provisional votes, not absentee votes.

CHAIR—I do not think it includes absentee votes.

Mr SULLIVAN—They are not included on that list. They are dead-set checked against the original record. In effect, the votes that are in envelopes have a voter ID attached, because a check is made of the signatures. I think the comment was that one in every five votes at the election was cast in an envelope. One in every five voters is not turning up at the polling booth on the day. That is an important consideration for us in terms of modern life. People are much more mobile. People are away from home on election day. You just might represent an area that was on holidays in November.

Fran Bailey—I accept all of that. I think that is a very rational view. I raise it more as a minor issue. I found it very interesting that over 2,000 votes were cast in the one polling booth. I have never had a satisfactory explanation of that from anyone. But the real issues that I want this committee to seriously address are those of the voter ID and Mr Danby's suggestion about the electronic rolls. I think that in this day and age, in the 21st century, it is a no-brainer not to have both.

Mr SULLIVAN—The electronic rolls will work when we have rolled out fibre to every school.

CHAIR—Ms Bailey, thank you for appearing before the committee. If there are any supplementary points that you want to make to the committee arising out of subsequent evidence that comes before it, please feel free to do so. I thank you for your cooperation and attendance today.

Fran Bailey—Thank you.

[1.28 pm]

LINDSAY, The Hon. Peter, Member for Herbert, Commonwealth Parliament

CHAIR—Welcome. Although the committee does not require you to give evidence on oath, I should advise you that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the respective houses. We have received your submission covering a range of matters. If you have an additional submission, you can present that; if not, I invite you to make a short opening statement to the committee.

Mr Lindsay—I will just go through the points that I have made, in no particular order. I detected an anomaly in the Commonwealth Electoral Act, which is what this committee looks at, in relation to wearing political slogans within a polling place. The intention of the act is that there should not be political slogans worn inside a polling place. The anomaly is that there is nothing to prevent an AEC employee on the day wearing a political slogan. The political slogan would not be in the form of ‘Vote Liberal’, because nobody can do that inside a polling booth. But there is nothing to stop them wearing a sign saying ‘Kevin 07’ or ‘Your rights at work’. There is nothing in the act to prevent that.

CHAIR—Do you know of any instances where that has happened?

Mr Lindsay—Not with AEC employees, no. The issue came up when I was investigating it. I know of a number of instances where members of the public or scrutineers were wearing that kind of material in polling booths, and there was nothing that could be done about it. That threw up the discrepancy in the act, where members of the AEC in fact could wear that kind of material. I think the intention of the act is clear, and I think that this committee ought to make a recommendation to tighten that up and to prevent political slogans being worn or displayed inside polling booths.

Senator HUTCHINS—By electoral staff; is that what you mean?

Mr Lindsay—No, by everybody.

CHAIR—I think it is mainly by everyone. As I understand it, AEC staff are required to maintain electoral neutrality.

Mr Lindsay—Yes, that is correct.

CHAIR—That is the policy. You are worried about people walking in a polling place—in other words, you want to strengthen the ban on what people can wear—

Mr Lindsay—Yes, or display.

CHAIR—or display during an election.

Mr Lindsay—All of us avoid wearing—

CHAIR—I am sorry to interrupt you, but let us deal with this. What do you do when a member of the public walks in to vote and they have ‘Kevin 07’ on?

Mr Lindsay—The answer is: nothing at the moment.

CHAIR—No, but the point is: if we strengthen it, what might happen is that they are banned from actually registering a vote.

Senator HUTCHINS—Or they would have to take it off.

Mr Lindsay—No, they just take it off—

Senator HUTCHINS—So Jennifer Hawkins—

CHAIR—I am not going there!

Mr Lindsay—or they cover it up. The next issue is truth in political advertising. It started to worry me in 1998, when, for example, in my electorate there were continuous television commercials saying that everything was going to go up 10 per cent because of the GST. That was clearly wrong, but there is no effective mechanism to stop that. I have drawn the committee’s attention to what the South Australian Electoral Act provides. It bans inaccurate statements of fact, which is a much more practical basis. There needs to be a mechanism for all candidates where, if they detect that someone is publishing or broadcasting something that is an inaccurate statement of fact, there can be a very speedy, timely response to whatever is happening. Both sides of politics suffer that problem. We are all guilty of it, but it should not happen, in the interests of the voter being properly informed and not misinformed. So my recommendation is that you consider the South Australian model and empower the AEC. Currently, they have no interest in doing anything because effectively they cannot do anything, but that is not what the public think is the situation.

Standardisation of the voting system is much more complicated. Can I just tell you about my experience on Saturday in Townsville. There was a by-election for the local government area of Townsville. There was great confusion about whether voting was compulsory or not compulsory. Certain people of high rank said, ‘Look, we’re not going to fine you if you don’t turn up to vote,’ so you get this confusion in the minds of voters about whether they do or do not have to vote. You get confusion with the mechanism of voting about whether it is first past the post, optional preferential or preferential. You find that voters in fact cast informal votes because of the differences in the state, local government and federal voting systems. The ideal—which I do not see how you are ever going to achieve—is that we just have a common voting system for all elections in Australia. That is not going to happen, but I think that we really should be mindful about certain principles: voting is compulsory, there is a penalty if you do not vote, and there has to be one system of voting. That would reduce the informality that currently occurs in Australia.

CHAIR—The problem that we have, I think, Mr Lindsay, is that each state and territory jurisdiction is sovereign, as is the Commonwealth. I know that, for instance, there are different views about optional preferential voting and a whole range of other things. But it is something that would need to be addressed in a cooperative federalism type manner.

Mr Lindsay—Yes.

CHAIR—But I hear what you are saying. We do not have power in relation to the states or territories.

Mr Lindsay—No. The fourth issue is voting practices in Indigenous communities. I can only speak in relation to my Indigenous community. This is a review of the 2007 election. Mr Chairman, I should just clarify this: this evidence does attract parliamentary privilege?

CHAIR—Yes, it does, so you are well and truly covered.

Mr Lindsay—Not that I am going to invoke that, but you have to be careful about these things. At the last election, one of the candidates was on Palm Island handing out T-shirts to voters. Normally, if you hand out a T-shirt to anybody on a booth in Townsville, it is not a valued item, but in an Indigenous community it is a valued item. In fact, there was a suggestion from my scrutineer that that particular candidate was handing out T-shirts with a view to—well, it was kind of a bribe: ‘Vote for me and here’s a T-shirt.’ The act indicates that that is not on.

CHAIR—You are certainly not allowed to do stuff that is an inducement or a bribe.

Mr Lindsay—No. On Palm Island in previous elections there have been six-packs of beer and that sort of stuff handed out.

CHAIR—We have situations where balloons are handed out to children, among a lot of other things, like the rest of the country.

Mr Lindsay—Yes. This candidate also, I understand, was handing out vouchers for free McDonald’s, because the person was the owner of the McDonald’s franchise.

CHAIR—Were formal complaints made by your scrutineer?

Mr Lindsay—Yes. That is the next point I want to make to you. The presiding officer at that particular booth took little interest in the complaint. Clearly, he was not briefed on what his responsibilities were, or, alternatively, he did not want to take action. It was only after strong insistence from my scrutineer that he went out and spoke to the candidate and informed him of his obligations and that what he was doing was against the law and the candidate ceased that particular practice. The other issue on Palm Island—

Mr DANBY—The practice of McDonald’s vouchers or the practice of the T-shirts?

Mr Lindsay—Both.

CHAIR—How long had that been continuing before it was stopped?

Mr Lindsay—It started when the polls opened, and it might have gone for an hour before it was stopped.

CHAIR—So it was acted on. Thank you.

Mr Lindsay—I would like the committee to consider this as a matter of principle, not as a matter of this particular incident. Really your report should direct the AEC to ensure that its presiding officers know that they need to take action in an appropriate and timely manner when they detect these kinds of things.

The other issue on Palm Island was the assistance that was given to people who were voting. Normally, you cannot vote if you are not capable of deciding or you do not know who it is you are voting for, but on Palm Island there is a high level of illiteracy. People were being brought into the polling booth by others, and the offer was made, ‘We will vote for you.’ The person whose vote was being recorded had no idea who they were voting for and could not articulate who they wanted to vote for, and that practice should not occur.

CHAIR—But the act has a provision in it where people can seek assistance from polling officials. If you have got scrutineers there, it seems to me that the appropriate thing to do is to take issue with the way votes are being cast with the relevant officers.

Mr Lindsay—In fact, that is what happened.

CHAIR—Then what happened?

Mr Lindsay—In due course it was stopped. But again it took a lot of effort for it to happen. Those voters who were being assisted in that way certainly had no idea who they wanted to vote for—

CHAIR—That is what has been reported to you; you were not in the booth.

Mr Lindsay—That is correct.

CHAIR—My concern is that as long as the electoral officials—

Mr Lindsay—These were not officials, these were other third parties—

CHAIR—I am talking about when it is drawn to their attention, act in an appropriate way. That is why you have scrutineers there. That is why I was interested as to whether the practice was remedied when it was brought to the attention of officials.

Mr Lindsay—Yes. So the summary of what I just told you about Palm Island is that the presiding officer did not act in a timely way.

CHAIR—How long did he take?

Mr Lindsay—I cannot tell you, but my scrutineer just said to me that he had to go back again to prevail upon the presiding officer to stop those practices.

CHAIR—I am interested in having some direct evidence as to how timely it was. I have no problem with counselling that officials should act in a timely manner if it is appropriate. You can do a supplementary submission, Mr Lindsay. I am just giving you my thoughts at the moment. My problem is that you were not an eyewitness to these accounts; it has been relayed to you. I

think it is a lawyer in me. I am not disputing what is being said. I would like an eyewitness account as to how long so that we can then ensure that we have a proper record of it and make whatever recommendation.

Mr Lindsay—Thank you, Mr Chair, for that opportunity. I will take you up on that.

Mr DANBY—Similarly with the period of time for these so-called inducements.

Mr Lindsay—I understand that.

CHAIR—If you can give us some direct evidence. Finally, unauthorised election material. We have only got until about 10 minutes to.

Mr Lindsay—I want to rush out as well. This is a hoary chestnut. You know and understand what it is about. I just leave it for your consideration. That is the end of my evidence.

CHAIR—That one is straightforward. Mr Danby and then Mr Sullivan.

Mr DANBY—You talk about the level of informality in your seat. The 2007 election saw informality in the House of Representatives decline from 5.18 per cent to 3.95 per cent, which I thought was a good development. What do you see as being the major factor in the decline of informality in the 2007 election? Did this not happen in your seat?

Mr Lindsay—Apparently not. Why I do not think it happened in my seat was an earlier point I made in relation to the confusion in voters' minds about what the voting system was. You find in a federal election a lot of people were putting 1 and that is it. The ballot was therefore informal. They are used to doing it that way in the state election.

Mr DANBY—In South Australia they have something called the savings provision, where if it is clear that people beyond putting 1 go to the last two votes and maybe do two 6s, two 7s et cetera those votes are still included. They are still included in South Australia. They were included to 1996 in federal election vote counts. That decreases the level of informality by about a third. Would you favour that savings provision?

Mr Lindsay—I have always thought that if the voter's intention is clear the vote should count.

CHAIR—So you have no problem with savings provisions where people double up 5, 5, or 6, 6?

Mr Lindsay—No. If the voter's intention is clear, it should count.

Mr SULLIVAN—You talked about the wearing of T-shirts by members of the public. I know the two T-shirts you are talking about and I imagine that they bordered on the definition of political slogans but I do not think that they fulfilled that definition, and they were certainly not people who were canvassing votes inside the booths, which is I think the intent of the regulation as it applies to us. Political parties cannot control the general public, so how far do you think we should go in not only enforcing their presence to vote but enforcing what they wear?

Mr Lindsay—We have an act where I think the intention is clear that there should not be political material inside a polling booth. We either enforce that act or we get rid of it.

Mr SULLIVAN—Would you call a how to vote card political material?

CHAIR—That does not come within the technical definition.

Mr Lindsay—The practicality is—

Mr SULLIVAN—Practically we cannot tell people what they can't wear.

Mr Lindsay—I think you can. We have got an act already but we are just not enforcing them. The committee has got to consider that.

CHAIR—We will take some advice on that.

Mr SULLIVAN—The state that we both come from in its state jurisdiction has optional preferential voting, and that has always caused a bit of drama for the federal voting. Also we have got 72 councils, I think, and each of those has probably got their own variation on how they vote.

Mr Lindsay—They have got first past the post.

Mr SULLIVAN—Harmonisation is a very difficult issue.

Mr Lindsay—Three different voting systems in Queensland.

Mr SULLIVAN—We have got optional preferential voting in divisions in my councils. Which option should the country to adopt?

Mr Lindsay—Optional preferential voting, in my view.

CHAIR—We will agree to disagree.

Mr Lindsay—Some of us are misguided, Mr Chair.

CHAIR—I have always been misguided, Mr Lindsay. That is why I am always in trouble.

Mr Lindsay—What do you support?

CHAIR—I support a full preferential system at a federal level, giving voters the option so it is not first past the post. One of the reasons I do that is that it means people can vote for alternative parties and then make a final choice, and at the end of the day the candidate who is elected has 50 per cent of the vote plus one. In a first past the post system if you have a tight election or four or five candidates you can get someone elected with 20 per cent of the vote and 80 per cent not expressing a preference for them. I understand that it is not a perfect system but that is the one I favour on balance.

I want to thank you for your attendance today. If you have got any additional comments or material that you want to supply us with, please feel free to do so. You will be sent a copy of the transcript and can make some corrections.

Mr Lindsay—I would like to make two further announcements not related to this inquiry. Mr Sullivan, the state election I would like to announce will be on 21 February next year, for your information.

Mr SULLIVAN—That is your prediction. Okay.

CHAIR—Is your middle name Nostradamus?

Mr Lindsay—It is on the public record. We will see. The second thing is that I have just come from a meeting where members of the Presiding Officers Information Technology Group were considering the new technology that members and senators might get. We have got Blackberries in mind.

Resolved (on motion by **Mr Sullivan**):

That the committee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at the public hearing today.

CHAIR—I thank everyone for their attendance and I declare the public hearing closed.

Committee adjourned at 1.49 pm