LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON THE 2016 ACT ELECTION AND ELECTORAL ACT

(Reference: Inquiry into the 2016 ACT Election and the Electoral Act)

Members:

MS B CODY (Chair)
MR J MILLIGAN (Deputy Chair)
MS T CHEYNE
MS C LE COUTEUR
MR A WALL

PROOF TRANSCRIPT OF EVIDENCE

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Secretary to the committee:
Mr A Snedden (Ph: 620 50199)

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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Amended 20 May 2013

The committee met at 1.02 pm.

WILLIAMS, PROFESSOR GEORGE AO

Evidence was given via teleconference.

THE CHAIR: Good afternoon, and welcome to the third hearing of the Select Committee on the 2016 ACT Election and the Electoral Act. The select committee was set up by the Legislative Assembly on 15 December 2016 and has been primarily asked to look at the operation of the 2016 ACT election and also to consider the ACT Electoral Act and other relevant legislation and policies in regard to three related matters: lowering the voting age; improving donation rules and donation reporting time frames; and increasing voter participation in elections and encouraging political activity. The committee is also asked to consider and report on any other matter it considers relevant to its terms of reference.

The committee has received 30 submissions, all of which are published and lodged on the committee's website. The committee invites feedback from interested persons on issues raised by the submissions. This is the committee's third public hearing. The first was held in July and the second in August. Today's hearing is public and is being recorded by Hansard and is accessible through the Assembly committees on demand webstreaming site.

I would like to welcome Professor George Williams as our first witness this afternoon. Professor Williams, I expect you are aware of the terms and conditions of the privilege statement?

Prof Williams: I am, thank you.

THE CHAIR: Before we proceed, one question that I have asked and will continue to ask all witnesses in this inquiry is whether you are affiliated with any political party.

Prof Williams: No. I am working at the University of New South Wales and I am appearing in a personal capacity.

THE CHAIR: Professor Williams, we have read your submission to the inquiry. Would you like to make an opening statement before we ask questions?

Prof Williams: I am happy to. I will be brief, as I know that we have limited time. Thank you for the opportunity to make a submission. As you can see, my submission is focused on the issue of whether the ACT should trial the introduction of voluntary voting for 16 and 17-year-olds. My view is that it should. It would be a bold step that I think would generate significant excitement and the possibility of much higher voter participation across the ACT, of course particularly in that age group. It also offers the chance to discuss and engage with young people in a way that has not effectively been done in Australia.

It is something that has now been done in a number of countries overseas. There is momentum growing in this direction, as it did decades ago towards lowering the

voting age from 21 to 18. The question for the ACT is about whether it wishes to be a leader in this space and to do so in a way that demonstrates its credentials as being willing to experiment with the franchise in positive ways that increase the number of people who can be involved.

The core reason that I put for suggesting why this is a good idea, apart from those democratic arguments, is that there are significant advantages in offering the vote to this age, typically in the last two years of high school, because it is a much better age for first engaging people with the vote than age 18, when people are often caught up in a range of other factors and typically have less educational and family stability. For 16 and 17-year-olds, it is also possible to twin the introduction of the vote with civics education, which would be much more effective and real because of the possibility of exercising that right.

I should quickly indicate that I have read the submission of the ACT Electoral Commission on this. It is probably useful to respond to a few matters that they raise. I note that their suggestion that this not be introduced goes not so much to the merits of the idea but to the challenges and obstacles, which they rightly identify. I would say the first one they identify, national conformity and consistency, I do not see as a good reason to oppose this. If that was the argument put, we would never have moved to people voting at 18 rather than 21. Someone needs to start, and if this is to happen, I think the ACT is the ideal jurisdiction. Of course, going first does mean moving away from the pack.

There are also a number of legal issues that it raised. One, for example, relates to compulsory enrolment and the self-government act. I am not entirely convinced it would be necessary to amend that act or to provide compulsory voting, but I think that would need to be the subject of careful legal advice. In any event, it is not an insurmountable impediment. It might require compulsory enrolment if the act is not changed. Again, these are matters to be worked through.

The other issue is the one of compulsory voting. They are right to identify a barrier there, but that is surmountable by a two-thirds majority of the Assembly. That would seem to be an appropriate path to deal with this problem; or, of course, it would be possible to introduce compulsory voting for this age group as another option.

The final thing I thought I would comment on is this: they are correct in that there are relatively few nations that as yet extend the voting age to 16 or 17. Certainly, the United Kingdom does not do so. But this is not the right comparator. As their table identifies, we are talking here about subnational jurisdictions like the ACT. One of the very best examples is Scotland, which has recently gone down this path, because of how successful it was for the referendum on Scottish independence. Having seen what has happened there, it is one of the key reasons why I think the ACT should consider this. It has been effective, it has led to a lot of excitement and interest and it has been a positive development for the democratic system in that jurisdiction. I will leave things there.

THE CHAIR: Thank you, Professor Williams. In your submission you talk about a voluntary basis. Just now, in your opening statement, you mentioned compulsory voting for 16 and 17-year-olds. Can you expand on that? I understand why you are

saying compulsory and all the rest of it, but how would voluntary work for everyone else? If, once you turn 18, it is compulsory, how would that work?

Prof Williams: At the moment 16 and 17-year-olds can choose to be provisionally on the roll, so there is already a mechanism for that to occur. It would be a matter of saying that those people on the roll on that basis have the option of turning up to vote if they wish to do so. Unlike everyone else, if they do not turn up to vote, no fine is issued. It is as straightforward as that in terms of the suggestion. I do recognise what the commission said—that there are a number of logistical issues to work through—but that is the notion. This would be introduced on what I would see as a cautious, incremental path. You could certainly make it compulsory, and that would be more consistent with the current system. I think there are justifications for going a little bit more slowly on this one and taking this path.

MR MILLIGAN: Thank you for your submission. My question is in relation to the engagement of our youth in the political process. The term that is most commonly used in a lot of surveys out there is "political maturity". If you do provide a voluntary voting system for 16 and 17-year-olds, how will that contribute to political maturity and more engagement in the political process for our youth?

Prof Williams: Thank you for the question. It is one of the key reasons why I am interested in this reform. I think that if you want young people to seriously engage with our democracy, it is not good enough just to tell them about it; you need to give them a level of appropriate responsibility that gives them the ability to exercise democratic rights. My view, having taught for a long time and worked with young people for a long time in schools and universities, is that I very often come across the most engaged and thoughtful people in this age group, yet they are not given a say in these matters in the way that is increasingly happening overseas.

That is the case even in cases where very clearly it affects their rights directly. The same-sex marriage postal survey is a good example of this, because 16 and 17-year-olds can vote with permission. I thought that was a good example; if we are talking about the future of marriage for the longer term, not only are they affected now but in the longer term they have at least as much of a say as others. I think we should more readily embrace the possibility of young people exercising a voice about things that affect them.

MR MILLIGAN: Do you think it is a matter of choice as to why so many of our youth are disengaged from politics in general?

Prof Williams: Certainly the surveys and other material are quite dispiriting, especially when it comes to fundamental questions of young people, such as whether they think democracy is working—well under 50 per cent. Do they support a democratic system for Australia? Again the figures are decreasing markedly. We have to ask: what are we going to do about this? It is not good enough to say the status quo is working. It is clearly not and people are turning away from traditional structures.

I do favour bringing them into the fold, if you like, and building trust in democratic institutions and processes. For me, the key is 16 and 17, in school. Education is available; tailored programs could be introduced about responsibility and also their

options to make a difference. But for that to be effective it has to move beyond just the abstract to actually saying, "Here's a level of trust and responsibility that you can exercise that shows you can play a meaningful role in the system."

MS LE COUTEUR: Professor Williams, you have talked about the difficulty of getting 18-year-olds to enrol, but, whatever we might say about the proposed postal survey, there appears to have been a huge enrolment in the younger age groups. Is it maybe that the issue is not so much whether they can or cannot but whether or not there is anything in our political system which actually interests them? Is this possibly the message from recent weeks?

Prof Williams: You are right. It is a good example. This is not an age group that is permanently turned off. They can be inspired and engaged. Of course, it is false to say they are not engaged in political activism in many forms. It is just that they have turned away from more traditional structures to online and other advocacy, where they are engaged in enormous numbers. The difficulty is that, because that so often occurs outside our democratic structures, it can actually erode some of the confidence in those structures and public confidence in institutions, which is vital for community stability and security.

On this, the possibility of inspiration is why I think looking at voting young is a good idea, and finding the point at which we can get people through the door to enrol and set up habits that hopefully last a lifetime, and giving a sense that this is part of being a citizen in our community. We should be using opportunities with particular issues, where they arise, to do that. I am certainly not a fan of the postal survey. I do not think that is a good process. But there is no doubting the impact that you have described in helping to deal with what otherwise can be a chronic form of under-enrolment.

MS LE COUTEUR: Another thing I am interested in is not part of your submission, so I am not sure if you are in a position to comment on it, and that is political donations. As you may be aware, in the ACT we did have quite significant restrictions. After the court case in New South Wales and the political changes, they were significantly rolled back in the ACT. To your knowledge, what reasonably and legally can be done—it is a legal more than a political question—in terms of restricting donations, should a legislature choose to do so? Could we, for instance, restrict it so that only electors could donate or on some other basis?

Prof Williams: There is a lot you can do, and certainly more than the ACT is doing at the moment. It is very difficult to limit it just to electors because of the Unions NSW decision in the High Court. On the other hand, I know you are looking at the issue of developer donations. Yes, it is conceivable to exclude particular groups that may be thought to be harmful or corrosive to the process. They need to be carefully identified, and rationally. It needs to be seen that there is a history and problem here that the Legislative Assembly is responding to. That is one way of doing it. I personally would not be waiting too much for any outcome of New South Wales processes on those laws. These things have become bogged down. The delay is quite extraordinary, to get even some responses to inquiries now of some years ago.

For me the big missing piece in the ACT that is consistent with what the High Court

says can be done is caps on donations, not just caps on expenditure, because there remains a risk that very large donations will distort priorities, exercise undue influence and amount to what I would call a soft form of corruption. Even though I know you have increased public funding and you have expenditure caps, I think all the evidence suggests you need to put a cap on individual donations because that is often the most troubling form of influence in these systems.

MS LE COUTEUR: You are saying that individuals are more troubling than groups in this system?

Prof Williams: No, not necessarily. New South Wales has done this—you would put caps on entities or individuals donating and say there is a maximum amount that can be given.

MS LE COUTEUR: Okay, that makes sense. I thought you were saying that individuals were more problematic than entities and groups.

Prof Williams: No, either way.

MS LE COUTEUR: Do you have an idea of what would be a reasonable cap to put?

Prof Williams: Again, you can look to New South Wales, where you are talking about $5,000 to $6,000 or so. I am not sure what the exact current figure is, but that is a large jurisdiction with political parties very hungry for large amounts of capital to fight campaigns. It would suggest that in the ACT if you introduced something around the $5,000 level that would bring you into line with what a state has done. Some other jurisdictions are looking at even $1,000 because they recognise that it is easy for donations to exert influence. It is a better system when parties rely upon a large number of smaller supporters and donors, rather than just a few larger contributions.

MS CHEYNE: I want to comment on paragraph 4, where you talk about it being easier to get 16 and 17-year-olds to enrol because they are more likely to be at school and living at home and that could be combined with civics education. My understanding is that across a lot of jurisdictions in Australia years 11 and 12 are often a time when students are choosing electives. There are very few compulsory subjects, if any. I was wondering how that would work or whether you are proposing that civics education becomes compulsory.

Prof Williams: Yes, it is a good point. I think what would happen is that, if this were extended, the Electoral Commission or another body would go around to schools, offer a short module to years 11 or 12 that would educate across that group, hand out enrolment forms and provide a systemic way of reaching this group. At the moment, the problem is that, because of those electives, they are often just completely missing out.

I know that in primary school they touch upon this and often in high school. But there can be a multi-year gap between turning 18 and getting to vote. My experience in talking to 18-year-olds is that they have almost no recollection of even doing the civics education many years before. I think there has to be something put in at years 11 and 12. It is a very busy time, a very stressful time often, for those students. But a

short, appropriate module twinned to the option of exercising a right on their behalf is something that I think should be looked at.

MS CHEYNE: Would you support that even if the voting age was not lowered?

Prof Williams: I would, because if is not, even at the moment we have the problem that the electoral commissions are striving to fix, of 18-year-olds just not enrolling. It is vastly under-represented compared to other age groups. That distorts voting patterns in Australia. It weakens the franchise, the legitimacy of the system.

I think that, quite apart from this issue, yes, we need to invest more heavily at pre-18 and around 18. But when they get to 18, frankly, it is very hard. With moving house, new relationships, new educational institutions, it is very hard to get their attention and focus at that point, whereas my interest is in a couple of years before, when we know from experience that it is often much more fertile ground to actually get responses and engagement.

MS CHEYNE: This has been largely focused on school students but, of course, many people leave high school before 16 and 17. Other committee members are nodding, I think based on personal experience. Professor, how would we reach those 16 and 17-year-olds who are not in the school system?

Prof Williams: Yes, it is a good point. One of the attractions of the ACT is that the number of kids who leave school earlier in the ACT is much lower than some other jurisdictions in Australia. So you have a much larger captive audience in your final years of high school in the ACT. But clearly you could not be exclusive; you would need online materials. There may be other ways of reaching out, particularly where children are identified as leaving school, to send them information. There are a number of ways that we normally reach people in the community. I cannot say that would be as effective, because, of course, one of the beauties of doing it at 16 and 17 in schools is that it is a captive audience. But you would need some intelligent, creative programs to reach out beyond that.

MR WALL: The committee recently met with the Electoral Commissioner from Tasmania. They provided some interesting figures on voter participation by various age groups—18 to 25, 25 to 30 and the like. It showed that the younger age group has one of the higher turnout rates of voting and then through the mid-20s and 30s voter participation drops dramatically before picking up again for people in their mid-40s and upwards. Do you think that the focus primarily should be on voter engagement for people who already have the vote, rather than on simply broadening the horizon to include 16-year-olds, to increase community participation?

Prof Williams: Yes, it is a good point. I certainly do not undersell that need for change at other levels and greater engagement. The survey statistics are really quite stark about the level of disengagement across all age groups. We are facing a very large problem at the moment with our parliamentary systems in Australia across those age groups. I have not seen those statistics. My guess is that, yes, it bears out what I would expect: of those enrolled, young people do well in turning out, if only because they do not have the same family and other responsibilities as later age groups. But the problem is not turnout for those enrolled. It is the fact that 18-year-olds do not get

on the roll in the first place. So the question would be: do those statistics reflect the under-enrolment of those age groups? But, other than that, I obviously cannot comment.

MR WALL: On that point, though, currently as young as 16 you can enrol on the electoral roll. You just do not have the right to vote until you turn 18. So how is then changing the voting age from 18 to 16 going to increase enrolment when 16-year-olds already can enrol?

Prof Williams: That is right; they can enrol. But there are no dedicated programs within the educational system twinned to casting a vote that make that effective. As I indicated, I think there is a serious problem with civics education around that age group. Also, I think it is a very abstract thing. You are enrolling for something in a couple of years. It seems a long way away. It is not connected to any immediate right or entitlement. It is hard to inspire and enthuse young people.

I have spoken to many school groups over the years about this issue. It just seems very abstract and distant to them. I think if you want engagement you need to build a level of trust, responsibility and the like. I think extending the vote on a voluntary basis is the sort of thing you would need to do to win more of that constituency over.

MR WALL: I have a final question. If this concept of having the opportunity to vote in as much as two years seems an abstract concept then wouldn't the issues that they are essentially voting on—taxation, housing affordability, cost of rates, possibly cost of national security if it went further to a national level—be even more abstract than perhaps something that would be conveyed in a couple of years?

Prof Williams: Some of those would be but, of course, for others something like affordable housing may be a very direct interest. It is an age group that is very deeply concerned about the ability to ever have the same capacity for home ownership as older age groups in Australia. But, again, there are other issues: same-sex marriage or climate change. As I have said, I very often find the most passionate and engaged people are in this age group. But there is often the absence of an outlet, particularly in traditional structures, so they turn elsewhere.

I would prefer to capture them within some of those structures. It is quite a conservative argument, in a way, to say, "Let's build them into our democratic parliamentary structures while they are interested and looking for opportunities," rather than essentially letting them go to other online advocacy groups that then capture their attention and actually draw them away from engagement in those processes.

THE CHAIR: We have a few minutes of Professor Williams's time left. Is everyone satisfied? Thank you so much, Professor Williams, for allowing the committee to ask you these further questions. A copy of the *Hansard* will be provided to you shortly for you to have a look at to make sure everything is okay.

Prof Williams: Thank you. Good luck.

Short suspension.

LEE, MR ROWAN, Manager, Government Relations and Advocacy, Vision Australia
ACUTT, MS AMANDA, Advocacy Adviser, Vision Australia

THE CHAIR: Welcome to the hearings of the committee inquiry into the 2016 ACT election and the ACT Electoral Act. I welcome two representatives from Vision Australia, Ms Amanda Acutt and Mr Lee. As the committee asks questions, the member asking will identify themselves to allow you to know who the question is from. I understand that the secretary has made you aware of the terms of the privilege statement.

Ms Acutt: That is right, yes.

Mr Lee: Yes.

THE CHAIR: As with our previous guest, before I proceed I have one question that I will be asking of all witnesses in this inquiry. Are you affiliated with any political party?

Mr Lee: No.

Ms Acutt: No.

THE CHAIR: I am going to hand over to Mr Milligan to ask the first question.

MR MILLIGAN: Thank you both for appearing today and for your submission.

THE CHAIR: I forgot to ask: do you have an opening statement?

Ms Acutt: We do, yes.

Mr Lee: We do, but it is not a very long one.

THE CHAIR: Sorry about that.

Mr Lee: Thanks very much for the opportunity to appear before the committee today. I am the Manager of Government Relations and Advocacy with Vision Australia, based in Melbourne, and Amanda is Advocacy Adviser, based in Brisbane. Vision Australia is, as you probably know, Australia's largest and leading provider of services to people who are blind, have low vision or are deaf-blind. We are a national not-for-profit organisation, with 30 centres, working with some 26,000 clients each year across all states and territories.

Some committee members may not be familiar with Vision Australia's long-term advocacy in relation to accessible voting in both state and federal elections. Along with other organisations in the blindness and low vision sector, we continue to work collaboratively with Australian governments and parliaments, seeking to enact the necessary legislation and the provision of sufficient resources to facilitate the development and continuation of equitable voting practices in Australian elections.

There are some 357,000 Australians who are blind or of low vision. About 310,000 of these are of voting age and approximately 5,300 are in the ACT. We believe that Australian voters who are blind or have low vision have the same democratic and human rights as the rest of the community to cast a secret, independent and verifiable vote in all Australian elections. Our written submission to the select committee specifically responded to the committee's third term of reference, which is increasing voter participation and encouraging political activity. We highlighted several aspects of the voting process that present barriers to full and equitable participation in the electoral process for people who are blind or have low vision. I would like to hand over to Amanda for the substance of our opening statement.

Ms Acutt: The voting options available to voters who are blind or have low vision at the 2016 ACT election offered little choice and were neither independent nor secret nor verifiable. Votes could be cast by an electronic kiosk style voting method at only six polling places during the pre-polling period and on election day, which represented less than 10 per cent of the 80 polling booths on election day itself. These kiosks have various audio and visual features that make them accessible to people who are blind or have low vision, although they could not be used by people who are deaf-blind, as they do not support refreshable braille output.

We would like to highlight to the committee that, by the very nature of the kiosks, the voting activities of voters who use them are displayed visually and, therefore, can be seen by people nearby. This severely compromises the right to a secret ballot for our community and represents a fundamental failure to provide a service equivalent to that enjoyed by sighted people. On a personal note, I would have chosen to ask my husband to assist me to vote, preferring to put my trust in him rather than a system that reveals my voting preferences to others in the community without my consent. In the absence of a trusted family member or friend, I probably would not have voted at all and risked a consequent penalty.

Vision Australia notes the recommendation of the Auditor-General's report into the 2016 ACT election. Whilst we support in principle the extension of pre-poll voting, we believe voting systems should be as accessible and inclusive as possible, but we cannot support the further rollout of voting kiosks. We do not believe that the current kiosk technology should be geographically expanded. We believe that any further investment in this technology would be better directed into adopting telephonic and internet voting platforms.

Having a range of options is important because people who are blind or have low vision, like the rest of the community, are a diverse group. They have different preferences and needs. Completing a ballot over the phone, at a booth, through the post or at a kiosk requires another person's assistance to record and cast a vote on the elector's behalf. None of these options ensures a secret, independent and verifiable vote for people who are blind or have low vision. In short, one size does not fit all. There will always have to be more than one form of accessible voting for voters who are blind or have low vision.

For Vision Australia and the blindness sector generally, the New South Wales iVote system is current best practice in accessible, secret, independent and verifiable voting

for the blindness and low vision community. The iVote system has recently also been adopted in Western Australia, and we are aware that the Western Australian Electoral Commissioner was pleased with the uptake of iVote in their state election in March this year. We understand that there were 2,288 completed iVotes in the 2017 state general election. Given that this is the first time iVote has been implemented in Western Australia, this is an encouraging uptake.

iVote enables people who are blind or have low vision to vote independently online via the telephone or through an operator-assisted call centre service. Not only does iVote provide a range of voting options to meet the varying needs of the blindness and low vision community; it also provides an opportunity for users to do a test run of the system, to save their ballot and to return it at a later point to verify the recorded vote. These functions allow people to build confidence in using iVote.

The growing popularity of iVote is clear. In 2011 some 47,000 people used the iVote system to cast their vote in the New South Wales election, and in the 2015 election this figure increased to 284,000. Importantly, between the 2011 and 2015 New South Wales state elections the number of people who are blind or have low vision using the system grew almost eightfold, to 5,300 votes.

There is a growing recognition that the iVote system provides the most effective suite of options for the blindness and low vision community. The Victorian Electoral Commission wrote this year, in its submission to the Victorian parliament's electoral matters committee inquiry into electronic voting, that it recommends:

> … the *Electoral Act 2002* be amended so that a limited category of electors (blind or with low vision, motor impaired, insufficient language or literacy skills, interstate and overseas) be allowed access to a remote voting system where their vote could be cast and transferred electronically …

The Victorian Electoral Commission noted that it is now of the view "that an efficient and accessible remote electronic voting option exists in the form of the NSW iVote system". Subsequently the Victorian electoral matters committee stated:

> The committee supports in principle the provision of a system of remote voting at Victorian state elections. The system should be available to a limited category of electors—those who are blind or have low vision, those with motor impairment, those with insufficient language or literacy skills, and eligible electors who are interstate and/or overseas.

Vision Australia recommend that the ACT should implement a system equivalent to iVote and all of its components; that is, online voting, automated telephone voting, and a human assistance call centre.

To conclude, thank you again for the opportunity to contribute to this inquiry and present on issues that are of relevance to our clients and the community of Australians who are blind or have low vision. We urge this committee to recommend to the ACT Electoral Commission that a model of accessible voting in line with the iVote system be implemented in time for the next ACT election to achieve a true secret, independent and verifiable vote for people who are blind or have low vision.

MR MILLIGAN: Once again, thank you for your submission and for coming along today. I am quite intrigued about the iVote system and what it can offer to vision-impaired Australians. I note that one of your main concerns regarding voting for the vision impaired is the rights of citizens to be able to vote in a confidential environment. But also we need to have a system that is sustainable and cost-effective and which provides good service. I note from your submission that there was a report done in 2011 by the Allen Consulting group. In that report it states that the average cost of a vote cast through this system was $74, I think. With that system scaled up to around 200,000 voters, the average cost would drop down to about $24. Do you know what costs are associated or what has driven those prices per vote? What has contributed to that?

Mr Lee: A lot of it is the development of back-end technology, as I understand it. We have not gone through a whole breakdown of those costs, but, like anything, when you first start out with technology it starts out expensive and the more it rolls out the cheaper it gets. Yes, it is a significant cost. The point we would make is: what is the cost of a secret, verifiable and independent vote? And over 200,000 voters brings you down to that $24 figure, and that would never be achievable in the ACT at all.

MR MILLIGAN: That would have to be a partnership between the states and territories or something, to buy into that program, to buy into that software.

Mr Lee: Exactly. That is why we highlighted what is happening in Victoria now. We think that if we get that critical mass of New South Wales, Victoria and the ACT—

Ms Acutt: Western Australia as well.

Mr Lee: And Western Australia, those costs, hopefully, would be driven down.

MR MILLIGAN: In relation to the feedback you have received from the people who have used this system, nothing else compares to the iVote system in regard to the confidence they have in casting their vote and the easy use of the system?

Ms Acutt: That is absolutely right. Our clients enjoy a range of options as well. It just provides that flexibility. We have a couple of quotes if you would like me to read some?

MR MILLIGAN: Yes.

Mr Lee: It is considered the gold standard.

MR MILLIGAN: Yes. Can you use the iVote system for community members who go along to vote who are vision impaired and also deaf? How do they get along to vote on polling day?

Ms Acutt: A person who is deaf-blind—as I understand it; I cannot speak for them—would rely on refreshable braille. With the device I have here, for example, what I am reading is a screen. Everything I do on here I can feel with my fingers. That is essentially what they would rely on.

MR MILLIGAN: Is that implemented anywhere across Australia? Does any polling booth use this?

Ms Acutt: The thing with iVote is that people can use their own technology.

MR MILLIGAN: Okay.

Ms Acutt: So it creates that familiarity and comfort, and confidence as well, in being able to vote.

Mr Lee: It is similar to internet banking. You use a tablet, your phone, any sort of device. The beauty of it is that if you are halfway through the process, you can save and come back to it; it does not get timed out. We have this thing all the time. Accessible technology? Yes, but is it useable and accessible? A lot of forms that people who are blind and have low vision try to fill out time out. Then you go back to the start. With the iVote thing you can actually save. It is a bit like some forms where you can actually do that. That is the beauty of the technology.

MR MILLIGAN: Do you know roughly how long it takes, on average, to complete?

Mr Lee: It depends on the ballot paper, really.

Ms Acutt: It would depend on the ballot paper.

MR MILLIGAN: Yes, of course.

Ms Acutt: A Senate ballot paper would take a while, for instance.

MR MILLIGAN: Absolutely. What type of assistance would people need on the day to use this system if they were to go—

Mr Lee: iVote New South Wales essentially is open from the start of pre-poll. Essentially, it is for the whole two weeks of pre-poll, which means the system does not crash if there is very high uptake, as it is spread out. We are pretty agnostic on the period of time, whether it be all of pre-poll, some of pre-poll or just on election day. Probably the longer the better, but we would not die in a ditch over the timing issue. It is more about the technology.

Ms Acutt: I do have a couple of client quotes. I will just read one of them out:

> I view the system as the best one I have ever used. It provided me with complete independence and I did not have the discomfort of having human intervention in the process. I was able to vote from the convenience of my office completely in private and take as long as I wanted to. The benefit of saving and coming back to the vote was very much appreciated. I look forward to this system being in place again at the next state election and encourage other organisations to use the system.

We did a lot of client engagement after the 2011 New South Wales election. That is a very typical response that we received.

MR MILLIGAN: Is this used at a federal level at all?

Ms Acutt: No.

Mr Lee: We have recently made a submission to the commonwealth, but the AEC are probably a little bit further behind than some other jurisdictions, so that will take a little bit of time. I know it is something they are looking at, and we have made representations and submissions on it. I cannot speak on their behalf, but my understanding is that there will need to be a bit of a generational change in their technology to allow this type of system to be adopted.

With the survey coming up, we have had really good discussions with the ABS. They will have a telephonic voting ability for people who are blind or with low vision. That is a simple registration process, a PIN—you select your own PIN. That will be emailed to you, posted or whatever. It is then just a matter of having "1" for yes, "2" for no—or it could be randomised. The ABS, because of the fairly recent census experience, are on top of this. They are probably ahead of the AEC in terms of some of this.

MS LE COUTEUR: One of the other things you touched on in your submission was about how-to-vote materials and how they tended to be PDFs and thus not usually accessible via your normal screen-reading software. We have had discussions with electoral commissions about ways that people, not just low vision people but everybody, can get access to electoral material. Is there a role for the Electoral Commission, legislation or something to ensure accessibility of information to your community and the wider community?

Mr Lee: On Tuesday we met with the Victorian government and we actually talked about that very point. Basically, no electoral material—policies, statements, speeches or whatever—is accessible to the blind and low vision community. Most websites are not accessible to the blind or low vision community, and policy documents tend to be in PDF.

MS LE COUTEUR: They do tend to be PDF.

Mr Lee: It is a case of "be careful what you wish for". No political party or head office has made any of their materials readily accessible or useable.

Ms Acutt: I would endorse that.

MR WALL: I have a supplementary on that point of accessible material. You may be aware that the ACT territory elections operate under an expenditure cap. Do you think that there should be some concessional dispensation for parties in preparing accessible documentation for hearing or vision-impaired constituents? From a campaign perspective, often it is a case of competing priorities with a limited budget.

Mr Lee: Yes, I clearly understand that. Yes, that would be something we would support and endorse. I would like to make the distinction between campaign collateral materials as opposed to policy documents, speeches and so on. For flyers and all of that it would be very expensive and costly. But for ones of substance—speeches,

policy documents and position statements—if there was a limit on that, we are talking about 5,300 electors, essentially, who cannot access your materials. We are talking about participation, education and inclusion.

MS LE COUTEUR: This would seem to be a much broader problem than just at election time, from what you are saying. I do not know whether you have ever tried to look at the *Hansard* that the Assembly publishes. If you have, do you have any comments to make? Do we have in any way an accessible or an inaccessible Assembly?

Ms Acutt: I have not had a look at the ACT specifically. I know that, with the Queensland parliament and the commonwealth *Hansard*, it is very time consuming to try and access them. I end up just giving up on it. You can ring up Vision Australia for advice around accessibility. We also have an auditing service. I can't speak about the technology or the costliness.

Mr Lee: It is not that difficult. The further websites are developed, the harder and more costly it is. We were dealing with the Commonwealth Games organising committee last week. When they were developing their website they got Vision Australia's digital access team to help them to develop the website. The cost was quite minimal because you are at the source coding end rather than having to retrofit your website. So it is not a highly expensive exercise. Indicative figures show that, to make websites accessible, it is probably 25 per cent more expensive, but the cost difference at the start is quite minimal.

MS CHEYNE: I have declared this to the committee, but Amanda and I vaguely know each other, I think from growing up in the same town, and maybe connected on some social media channels, for better or worse. My questions are regarding secrecy and are probably from a different perspective. Obviously, secrecy is paramount and it is probably one of the key considerations here. If iVote records votes over the internet or by phone, how is a person's identity verified? The other part to the question is: do you have any concerns regarding security risks or fraud? Certainly that is something that has been raised by the ACT Electoral Commission, including when they have explored other ways to do voting generally in the ACT—that it is all not very connected. It is offline. There is electronic voting but it is not connected to a broader system so as to avoid tampering. That might be a major consideration here for them and us.

Mr Lee: We are not technology experts, so I start from that point. What is encouraging, and it is the reason Amanda in her opening statement mentioned Victoria, is that the Victorian Electoral Commissioner had that concern after the 2011 New South Wales election. He had some concerns about security. But he is now of the view that he and they have trust in the system. They have changed their recommendation from one parliament to the next, following the New South Wales election. In terms of the blind and low vision community, the feedback we have had very strongly is that the importance of a secret, independent and verifiable vote far outweighs any security issues that there could be. That is the very strong view.

Ms Acutt: From my perspective, I do everything online—internet banking. I am not in any way trying to compare the two, but I am just so used to doing everything online

or over the telephone that it makes sense to me to be able to vote by that means.

Mr Lee: We are not asking for the iVote system to be implemented like it is in New South Wales, where you might have 280,000 people, which does create problems. It is more for a discrete part of the community—a limited rollout initially, anyway.

MR WALL: The committee recently visited Tasmania and had a look at the way their electoral system operates, which is very similar to the ACT. As part of that we saw what they call VI Vote, which is their vision-impaired voting system, which caters for both vision-impaired and completely blind voters through the use of either enlarged font on a screen or a completely audio experience. That was only available at pre-poll centres but it gave voters a completely secret ballot. It seems, compared to the iVote system, quite a cost-effective system. Is there a preference that a system be available from home or is having a technology solution at polling booths that is easily and readily accessible an acceptable—

Mr Lee: The Tasmanian system sounds like EA vote, which is the kiosk-based technology we have in Victoria, which is similar to the kiosks you had here at the last ACT election. There were six centres?

Ms Acutt: Yes.

Mr Lee: That is why we quite deliberately said in our opening statement that it is okay to have six of them in pre-poll, but do not expand them. They are probably the worst type of technology for blind and low vision people because it is enlarged font. There is a screen on three sides. People can see you. And you do need assistance at times. So there is a volunteer who will often shadow next to the kiosk.

Ms Acutt: Yes, I would agree. The kiosk system is a good option in general for the community, but for our community it is not. I suppose we do not consider it appropriate to suggest that it is an accessible option for us because of the fact that people can see our vote. The rest of the community would not consider that to be appropriate, so we do not either. The iVote system, as Rowan said, is the gold standard. From memory, when we did the consultation with our New South Wales clients, they said that they still went to the polling places to vote, just because it is the thing that you do in your community. They were just pleased to be able to use devices and technology that were already familiar to them to cast their vote. It was a more, I suppose, inclusive and enjoyable process for them.

MR WALL: One thing that struck me about the Tasmanian example was that it was essentially a keypad with four keys, each with a tactile symbol on them so that they could be identified and you could ensure that the keypad was facing the right direction to match the audio instructions. It is a piece of equipment that you would likely use only once every three or four years. It seemed quite cumbersome and would take up probably a significant portion of time to sit there, especially if you wanted to preference a number of candidates. It becomes quite a time-consuming exercise.

Mr Lee: Yes.

Ms Acutt: Yes, the focus becomes more on learning to use the tech rather than the

actual voting process, which I think is not what they are trying to achieve by introducing it.

THE CHAIR: I have what I hope is a very quick question for you, noting the time. You briefly raised that New South Wales, Western Australia and Victoria are soon moving to iVote?

Mr Lee: Yes. I will try to give you a very quick answer on that. A joint parliamentary committee on electoral matters looked into electronic voting. The commissioner wrote to the committee recommending iVote be picked up, or a system like iVote—they actually did say iVote. The committee then wrote to the government saying, "We support in principle the adoption of iVote." That was in May. The Victorian government has six months to respond to that joint parliamentary committee, so that will be in November. We do not know what the government are going to say yet, but they would be going against their own committee—

THE CHAIR: Currently, iVote is operational in two jurisdictions?

Mr Lee: New South Wales and WA.

THE CHAIR: Only for their state elections, not their local council elections?

Mr Lee: I am trying to remember. I think it is, actually. I would have to come back to you on that.

Ms Acutt: I do not think so.

Mr Lee: We will give you a definitive answer, but our belief is that it is not.

THE CHAIR: There being no further questions, I would like to thank you both for your time. A copy of the *Hansard* will be provided to you when it is available.

FIELD, MS JULIE, Executive Director, Legislation, Policy and Programs, Justice and Community Safety Directorate
COSTELLO, MR SEAN, Director, Civil Law, Legislative Policy and Programs Justice and Community Safety Directorate

THE CHAIR: I welcome the representatives from the Justice and Community Safety Directorate. Before we begin, I have a question that I have been asking all witnesses that appear before the committee. Are you affiliated with any political party?

Ms Field: No.

Mr Costello: No.

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

Ms Field: No, we would not.

Mr Costello: Just in relation to your earlier question, I was previously employed as a political adviser to Katy Gallagher some time ago now, but I put that on the record.

THE CHAIR: Thank you, Mr Costello. I appreciate that. As Ms Cheyne did earlier, I note that I know Mr Costello and have done for many years. In case there is any conflict there, I thought I would put that on the record. Ms Le Couteur, do you have a question for the directorate?

MS LE COUTEUR: Yes. You have a little section about banning political donations. Specifically, you have the commitment of the Labor Party. In fact, it was part of the parliamentary agreement. You made some commentary because previously we had legislation that attempted to ban donations from individuals. It then became the Assembly's belief that after the New South Wales case—you know which one I mean; I do not have to find the right piece of paper to tell you who it was—as I understand the effect of the conclusions, it was not possible to restrict donations purely to electors in the electorate.

My question is: it seems that it must be possible. New South Wales has clearly banned donations from developers. There has not been a constitutional challenge. So presumably that is sorted. Presumably, then, the ACT could also do the same. We could discuss the merits or otherwise of developers, but I think you would have to say they are clearly not unique—well, they are unique in some factors. I suppose my question is: would it seem to you to be possible to restrict donations in any other way apart from just developers, or are they a unique category?

Ms Field: Thank you for the question. I think we would have to look at the merits of each case individually. It is not a question really of saying, "Who can we ban?" It is a question of saying, "There is this entity that may be problematic. Is there a good reason why we could ban them and is there an evidence base?"

Mr Costello: I was only going to add that the High Court authority you talk about particularly is an implied right of political communication under the Constitution,

which is a live issue here. But we also have the Human Rights Act, which has a right to participate in public life. In a legislative sense, it sets out many of the same sorts of questions that the High Court was asking in those cases you referred to, which are whether any restriction on those rights—whether it is the implied right of political communication or the right to participate in public life—is reasonable and justified and, as Julie said, what is the evidence base for them? So it really depends on the type of person you are looking to ban as to whether that evidence base exists.

Ms Field: And why—the reasons behind that.

MS LE COUTEUR: You used the word "person". There was never a suggestion in the ACT of a ban on any ACT electors. The issue was more to do with non-persons.

Mr Costello: Only individuals have rights under the Human Rights Act, so that is worth bearing in mind. The implied right under the Constitution might go a little broader. But I suppose it is using "persons" also in the broadest sense of legal persons; so it could be, depending on the circumstances, on individuals.

MS LE COUTEUR: Yes. I was thinking Human Rights Act persons, because largely the restrictions would have been on entities, non-persons.

Mr Costello: Yes, you are quite right.

MS LE COUTEUR: Does it seem to you to be possible to have other classes of entities that would be restricted—not uniquely developers?

Ms Field: I do not believe there is anything particularly special about developers in this case. It would really depend on the particulars of what we were doing and why we were doing it as to the reasonableness of it.

Mr Costello: Perhaps noting that even when banning entities, individuals may be affected by that ban.

MS LE COUTEUR: Certainly when there is the right to join unions and things. I understand that is in the Human Rights Act. Yes, human beings can join together.

Mr Costello: Collectively, yes.

MS LE COUTEUR: And have some collective rights, although in terms of giving donations they presumably could equally well exercise them as an individual as they could jointly.

MR MILLIGAN: Where does the concern lie with banning donations from, let us say, a property developer? Where does that come from? Where is the concern with property developers donating? What are we looking at here? Are we looking at the potential to influence government?

Ms Field: Basically, in a representative democracy, the perception is that everybody has an equal right and each of their votes has an equal right. They are recognising that even in a representative democracy there are things that can happen that can sway that

and mean that some people's votes might be worth more than others. It is that sort of thing. Really, that is the perception around property developers and other people who have interests that do not necessarily align with those of the rest of the community.

MR MILLIGAN: And that may influence or may be perceived to influence government or politicians?

Ms Field: Yes.

MR MILLIGAN: So wouldn't the real issue be, "Those politicians can get influenced by an outside source. Should they be in that role? Should they not be a politician because they have been influenced?"

Ms Field: I think there is a distinction between whether people actually are influenced or whether there is a perception. A lot of things around conflict of interest relate to perceptions. It is really how you address those. That is a decision quite often at a political level, particularly in relation to the Electoral Act, where the Electoral Commissioner is an officer of the parliament, an officer of the Legislative Assembly. Really, it is the Legislative Assembly that makes decisions around that. When you look at the engagement around electoral amendments that is certainly one area where a whole room full of different people—people from different parties—will sit down together and actually talk about individual sections and paragraphs. That happens usually around planning and around electoral matters.

MR MILLIGAN: Are property developers the only industry we should be concerned about? Are there any others, like the Law Institute, law firms or anyone else, we should be concerned with?

Mr Costello: It is probably not for us to speak to that, other than to note that in the High Court case that we talked about with Ms Le Couteur, the High Court felt satisfied that there had been sufficient evidence to make the restriction on the implied right to political communication for the purposes of that particular ban. I suppose, going back to the earlier question, it will really depend on what the evidence base is as to why you would exclude a particular group of people. But there is some case law in Australia about property developers. We can say that much.

MR WALL: I have a supplementary on that. You have touched on what the evidence base is. Is that essentially the justification for that legislative exclusion to a part of the community for the purposes of political donations? Is there a requirement, as legislators, to be able to demonstrate or point to examples where a developer has at least been perceived to have used their financial influence to gain an outcome?

Ms Field: I do not think I can comment on that. Really, this comes up as an issue when a ban has been put in place and there is a challenge to that—whether it is reasonable in all the circumstances—and at that time establishing that there has been some activity that suggests that there has been some influence.

MR WALL: There is certainly quite a substantial body of evidence in New South Wales particularly of developers at various levels of government either having the perception of gaining influence or materially having influence, whereas that same

level of evidence I do not believe exists in the ACT. Whilst there may be a perception in some quarters, there is certainly no evidence and certainly nothing that has been before the courts of either members of the public service or members of the parliament having actually been influenced by property developer donations. The High Court weighed up, on balance, I guess, the wrong against the legislation and said, "No, the legislation counters that effectively." But there is no evidence of any issue in the ACT; so would that same challenge then be likely to be upheld, having no evidence base for making that exclusion of political freedom?

Ms Field: It really depends on the particulars of the case. I just do not think you can guess. Part of it comes down to the ACT being an island in the middle of New South Wales. There are things that we respond to that have not yet become actual problems in the ACT because it is easier to get out in front of that. Whether what we do is reasonable will depend on how likely it is to happen and how widely acknowledged it is, I think.

Mr Costello: I was just going to say that, until we have draft legislation or the hypothetical can get fleshed out with some real life examples, it is difficult to really pinpoint. I appreciate what you are saying but it really will come down to—as often these questions about rights and limitations do—very much the detail of how you do—

Ms Field: And it can come down to a single word.

MR WALL: I guess the concern I have, as someone that sits in the Assembly as a legislator, is that we are strongly considering removing a democratic freedom of a group of individuals by virtue of their employment or perhaps their spouse's employment, depending on the definition. Assuming that it is similar to New South Wales—as you suggested, we are an island—we would be doing this without any evidence base to say that there is actually a problem that needs addressing. For the Justice and Community Safety representatives then not to be able to give us any indication as to whether or not that would stand the rigours of a court challenge, in my thinking, places us in an even more difficult situation as to whether or not the laws we are considering recommending to be enacted would actually withstand a challenge, given that there is no evidence base for doing so.

Mr Costello: Any law introduced in the Assembly has to be accompanied by a compatibility statement that says whether or not it is compatible under the Human Rights Act, and this law would be no different. The explanatory statement would need to cover off exactly the sorts of questions you are asking. It would be obviously for the Assembly to determine if it has met that threshold.

Ms Field: And the scrutiny of bills committee would look at that as well and provide advice on any thoughts they have. We are always interested in those.

MS CHEYNE: I am not sure you will be able to answer this. Does our electoral system currently serve the goals of the Human Rights Act as best as it could?

Ms Field: I think that is a really big question.

MS CHEYNE: It is a really big question. I will try to narrow it over time.

Mr Costello: It is a great question, though.

Ms Field: Somebody international came and visited earlier in this year, I think.

Mr Costello: Yes. I cannot recall their title; I apologise. But immediately after the ACT election I believe someone who is experienced in observing elections on behalf of the United Nations was here and did observe shortly after our election that we obviously have a very mature democracy—I think that is the way they described it—on the basis that we are able to do things like Robson rotation and the Hare-Clark system, which in less mature democracies would be quite challenging. But the ACT, on a regular basis now, has managed to do well.

Ms Field: It is a quite a nuanced approach.

MS CHEYNE: Yes.

Mr Costello: Multi-member electorates; so there are lots of sort of moving parts to our democratic system that they found were evidence to show a mature democracy, at least, to be able to achieve those things.

MS CHEYNE: Do you recall what that was? Were they giving a lecture?

Mr Costello: Perhaps I can take it on notice. It was on ABC Radio, but I will try to find it for you.

MS CHEYNE: Thanks. If it is gone, that is fine. If we decided to seriously consider changing the voting age, which aspects of the Human Rights Act would be most relevant regarding that?

Mr Costello: The right to equality, which covers non-discrimination, would be one that would be relevant. The rights of children would also be relevant. There is participation in public life, which talks about the ability to participate in an electoral system. They would all be relevant rights to consider with such a change.

THE CHAIR: What would be the legal ramifications of lowering the voting age in the ACT? As you have already pointed out, we are an island within New South Wales. We are a small jurisdiction. Our legislation is governed, really, by the federal powers that be; they can take our laws off us if they choose to do so. Are there some legal ramifications to lowering the voting age?

Ms Field: I do not know that there are legal ramifications. There might be some practical implications, because there would be a disconnect with the commonwealth system. The Electoral Commissioner could probably answer this better, but if you register in the ACT you are registered in the commonwealth and vice versa. There would need to be some disconnect to handle the fact that we would have voters who could not vote in the commonwealth system, could not be registered. I think that would be operational. Obviously there would need to be legislative amendments, but I see it more as a practical problem. That would, I would expect, also put pressure on.

There could be confusion. Young people who would be required to vote in the ACT or who could vote in the ACT might turn up. Sometimes there is not a recognition of which tier of government you are voting for. There might be people turning up and then finding out that, no, this is not one of the elections they can vote in.

MR MILLIGAN: I would like to get you to elaborate on recommendation 4, that the name of an entity be shown in an authorisation statement, where the electoral matter is published on behalf of an entity.

MS LE COUTEUR: I do not think that is their recommendation. These are things that have been referred to the committee. They might agree with it.

Ms Field: It was the Electoral Commissioner's recommendation in his report on the 2016 ACT election.

Mr Costello: I think he was recommending some further transparency around those authorisation statements.

MR MILLIGAN: Right.

THE CHAIR: I note that you talk about some of the previous inquiries that the Legislative Assembly has undertaken in relation to the Electoral Act, and I note that there have obviously been changes to the Electoral Act due to those inquiries. I know this is probably a little difficult for you to answer, but we will give it a go. Are there certain things that currently exist in the Electoral Act that we should be taking a really hard look at? I know that we have outlined a few of the areas that we are interested in. Are there areas that, in your opinion, we need to be looking quite closely at?

Ms Field: I cannot personally think of anything that has not already come up that screams out for attention. Generally the ACT population, and certainly all the electoral commissioners, have been quite engaged and willing to raise matters. We tend to canvass issues as they come up. Because the Electoral Act has been around for a long time, it is getting more nuanced as we go along. Sometimes, after there have been a large set of amendments and if there have been amendments on the floor of the Assembly, there may be some minor things that get out of alignment across the act.

Mr Costello: I thought your discussion paper canvassed all the issues. As both the Auditor-General and the Electoral Commission noted in their reports, there have been amendments periodically to the Electoral Act over the years. As Julie said, it is becoming quite a mature act. It is being amended regularly to try to catch up and pick up any issues as they arise.

Ms Field: I think anything that was really obvious we have got. And some of the outstanding issues are really not as clear. From a policy perspective, there is not a right answer. It really will depend on where you sit, which is why we are really interested in the views of the committee.

THE CHAIR: Absolutely. Are there any further questions?

MS CHEYNE: We are all thoroughly distracted. The same-sex marriage postal survey is going ahead.

THE CHAIR: The High Court has just released its decision.

MS CHEYNE: Apologies to our witnesses.

Mr Costello: I understand the distraction.

MR MILLIGAN: Is that recorded in *Hansard*?

THE CHAIR: Yes.

MS LE COUTEUR: Can I continue on the 16-year-olds and 17-year-olds? Most people who have supported that have suggested that it should be a voluntary vote, and then people have gone on to say that it is either confusing or downright anti-democratic to have it voluntary. The downright anti-democratic people would be those people who think that this would lead eventually to it becoming voluntary for everybody. Have you any views on either of those propositions?

Ms Field: Voluntary voting across the board, I think, is anti-democratic. If you look at the countries where it occurs, you find that people who do not vote tend to be the marginalised people and the poorer people. So across the board I would say no. Really, it depends on whether you treat a voluntary 16-year-old and 17-year-old vote as a stepping stone to making it compulsory or whether you say, "Actually, it's a stepping stone to being compulsory when they turn 18." The narrative around either of those I think would be okay. But I agree: if it is seen as a stepping stone for having everything voluntary, I do not think that is a good outcome for the ACT.

MS LE COUTEUR: That it could be seen as a stepping stone to adulthood?

Ms Field: It could, yes. I think that is quite acceptable.

MS LE COUTEUR: I assume you would not see any particular legislative issues with making voting voluntary for 16-year-olds and 17-year-olds and leaving it compulsory for the rest of us?

Mr Costello: I think it is more the practical issues that Julie mentioned.

Ms Field: Yes.

Mr Costello: It is probably more a question for the Electoral Commissioner.

Ms Field: Yes.

Mr Costello: As to how he might operationalise something like that.

Ms Field: And you might just need to duplicate provisions and slightly change them, so it might take a relatively large amount of legislation to do it. But that is if it is worthwhile.

THE CHAIR: No more questions? Thank you so much for appearing today. A copy of the *Hansard* will be provided to you. Where questions have been taken on notice, if you can turn them around as quickly as practicable, that would be greatly appreciated. We will just suspend for a moment.

Short suspension.

BENNETT MOSES, ASSOCIATE PROFESSOR LYRIA

Evidence was given via teleconference.

GORE, PROFESSOR RAJEEV

THE CHAIR: Welcome to the third hearing in the inquiry into the 2016 ACT election and the ACT Electoral Act. I would like to thank our next witnesses for appearing and ask if you have been made aware of the pink privilege statement.

Prof Bennett Moses: Yes, I have, and I am fine with that, thank you.

THE CHAIR: Excellent. Before we begin today, one question I have asked all witnesses and will continue to ask in this inquiry is whether you are affiliated with any political party.

Prof Gore: I am not.

Prof Bennett Moses: No, I have no affiliation with any political party. By "affiliation" you mean membership as opposed to other things? I have voted for political parties previously.

MR WALL: Membership or employment, largely. Everyone votes for someone; that is okay.

Prof Bennett Moses: Thank you.

Prof Gore: It is supposed to be secret.

MS LE COUTEUR: But it is compulsory, so we assume that you have done that.

THE CHAIR: Before we get started with questions, do either of you have an opening statement for the committee?

Prof Gore: I do, but I am happy to let Lyria go first.

Prof Bennett Moses: The connection is not fantastic, so I am doing my best to hear, but I think you said for me to go first. What is fundamentally important here, at the end of the day, is that people have trust in the counting of votes in elections. While the ACT system is open source, which gives it a significant advantage in terms of transparency over some of the other software being used, where there are problems with it—and Raj can talk further to those—it is really important to engage with those problems and consider how it might be improved.

THE CHAIR: Would you like to say a few words?

Prof Gore: Yes. Am I allowed to say anything about iVote?

MS CHEYNE: Yes.

THE CHAIR: You can say whatever you like.

Prof Gore: First of all, my expertise is in program verification. I am a professor of computer science at the ANU. Program verification is the idea that you can prove mathematically that your computer program meets its specification, that it does what it is supposed to do. I am on the program committee of one of the foremost international conferences in electronic voting. I will travel in October to present a paper there. I am already slated to be the program committee co-chair for the technical program next year. So I am a technologist and I am an expert in electronic voting.

I will keep it brief. iVote is not verifiable. iVote is not secret, since the government knows who you are and how you voted. iVote is easy to use, so it is natural for the visually impaired to like it. EVACS, which is the system used in the ACT, may contain bugs. We found three which have been acknowledged by the ACT Electoral Commissioner. Each of them could change the outcome of an election. They did not, but we showed that there were elections for which the outcome would be different if the bug was fixed. The Electoral Commission knows that.

There are many simplifications in the way votes are tallied in the ACT, and they are present because the votes used to be tallied by hand, so it made sense for those simplifications to be there. If you are counting 300,000 votes and you only have 10 days, you want to make it as simple and as fast as possible. They are no longer necessary, since we count votes by computer. As we have shown, these simplifications can lead to absurd results. For example, if you switch off the simplification, different people get elected, and with these simplifications, during the middle of a vote, a candidate can have a negative number of votes. Sooner or later there will be a High Court challenge to an election result. How will ACT elections prove that their computer results are correct and how will they prove that the counted votes are the cast votes? That is all I have to say.

MS CHEYNE: You said you had found three bugs, for lack of a better term?

Prof Gore: Yes.

MS CHEYNE: With our system it is not connected to the internet, so does that mean the verifiability was due to the software and it is therefore correctible? It seems to me that one of the issues with iVote is that it is connected to the internet; thus it has some security risks associated with it. Where are our bugs coming from?

Prof Gore: The bugs that we found were in EVACS, not in iVote, and they were programming errors.

MS CHEYNE: Software errors?

Prof Gore: They were just programming errors. They made a mistake and, instead of doing the correct thing, it did something else. But it was a big enough bug that we could construct toy elections where it gave the wrong result. So that is EVACS.

MS CHEYNE: Our system. I am talking about our system. I don’t care about iVote.

Prof Gore: Fine; so EVACS.

MS CHEYNE: I am saying that iVote is connected to the internet but we are not.

Prof Gore: That is right.

MS CHEYNE: I was wondering where the issue came from.

Prof Gore: The issue is—

MS CHEYNE: It is a programming error?

Prof Gore: Yes.

MR WALL: Professor Gore, you mentioned that you have constructed examples of where those glitches or errors could change the outcome of who was elected. Have you run the data that is published on ballot papers, and do those glitches cause a different outcome? Are you able to give examples, please?

Prof Gore: We have checked all four previous elections. The bugs do not change the result, but sometimes some votes go in slightly different directions. I cannot be more specific than that at the moment, but if you give me some time, I am happy to take this on notice and give you examples of where some votes go.

MR WALL: That would be appreciated, if you are happy to take it on notice.

Prof Gore: Yes.

MR WALL: That would be great. The change that you are recommending to six decimal places in preferences rather than the fractional, is that one of the changes that comes around from—

Prof Gore: There are three main simplifications that we identified which can cause problems. One is known as the last parcel, and I think someone else has made a submission to get rid of that. Basically, it says that you pre-identify the votes that will be transferred rather than go through all the votes and see who is the next preferred candidate. We showed that that can lead to weird results. In our paper we show that it happened in the something-or-other count in the Brindabella election in 2016, or something like that. This is the paper that we published last year. I am happy for you to have a copy of it. It contains real examples of where these simplifications made a difference to the way that the votes went in real elections in the ACT.

The second simplification is called loss by fraction. At a certain point, someone might have 700.999 votes and they round it down to 700. So you have lost 0.999 of a vote, which is effectively a vote. If you keep doing that enough times, we show that weird things can happen. In the Brindabella preferences, something weird did happen, to the point where Andrew Wall was the declared winner, but we can show that if you had not done it that way, Mick Gentleman would have been the winner. This is serious stuff.

MR WALL: But it does not change who would have been elected, just the order in which they were elected?

Prof Gore: I am not sure. I need to look at that more. We had a limited amount of space here, so we could show that—

MR WALL: Don't tell me that. I beat him!

Prof Gore: The third one is that at certain points they round the numbers. So there is the loss of the fraction and there are also some rounding errors that come into effect. What we are advocating is that if the legislation specifies that you transfer votes as fractions, you actually do the computation properly using fractions. If it is two-thirds, you keep it as a "2" and a "3", instead of rounding it to 0.666. What we have shown is that our prototypes, which we have developed with our students, can do that, and they can do that efficiently. We can count a million votes in 20 minutes. There are no impediments to that. There is no reason to keep these simplifications anymore.

Sooner or later, a losing candidate will challenge the result based on a number of factors that I am happy to point out. We are not in a position to know how the High Court will rule. As usual, the law is a little bit behind the technology. What does it mean for votes to be counted by computer as opposed to by hand? What we find is that when you approach the electoral commissioners and tell them about these things, they are not technologists either, so they are advised by a commercial company with vested interests. Invariably, every time that we have let the electoral commissioners know about these bugs, the response in writing is, "Thank you for your information, but I have full confidence in the ability of our software to count votes more accurately than can be done by hand." I do not dispute that, but just because we got it wrong by hand does not mean we should be getting it wrong by computer.

MR WALL: Which means that there may still be errors and the result may still be wrong?

Prof Gore: Absolutely. We show that these simplifications lead to stupid results. So the legislation needs to be changed. The ACT Electoral Commissioner cannot act until we change the legislation, and that is going to take some time. But you are asking for a disaster. Sooner or later, a losing candidate is going to challenge in the High Court and all hell is going to break loose.

MR WALL: Do either of you hold any concern over the electronic voting at pre-poll stations as to the integrity of that vote or the ability to scrutinise that vote?

Prof Gore: Lyria, do you have anything to say?

MR WALL: Are you still there, Lyria?

Prof Bennett Moses: I am sorry; I have not looked at that question, so I can't answer that.

Prof Gore: That is okay. I just wanted to give you an opportunity. Yes, there are

absolute concerns that we have, and we have made the ACT Electoral Commissioner aware of them. First of all, in electronic voting in general, there are two important concepts. One is called "cast as intended" and the other is called "counted as cast". Cast as intended means that when I cast a vote for A1, B2, C3 and D4 on a piece of paper and put it in a ballot box, I can vouch that I have cast a vote as I intended, whereas in the ACT, with the EVACS system, we fill out a form on a computer and the computer says, "Here is how you are about to vote." You say, "Great, I've said A1, B2, C3 and D4." You press the button, but you have no guarantee that that is what the computer is recording.

MR MILLIGAN: Just because it says it, you assume that that is how it is recording it?

Prof Gore: You are assuming that the program that is doing this is correct. As I have shown you, programs can be wrong. Fortunately, our system is not connected up to the internet, so I am not so concerned that someone has got in there and fiddled with the vote-casting software. But it was written by people. It has four bugs in it already. We do not have access to the vote-casting code. We can get access to it if we sign a confidentiality agreement. But I am an academic; I do not go around signing those sorts of things. I want to publish what I find.

The only thing that we have been able to look at is the vote-counting code, which is public. As I said we have found three bugs in it so far. How do you know there are not bugs in the vote-casting code? Again, how will you be able to prove that the votes were cast as intended? You cannot. If someone says, "I lost by three votes; you can't prove that the votes were cast as intended.; I want to run the election again," what are you going to do?

The second one is that the counting code is also suspect because after we reported the three bugs and we got the same response, "We have confidence that it is better," we gave up. We have not bothered to look at it again. We just built our own. What we do now is we run our own software, and if at the next election there is a discrepancy, we will publish that. And who knows what will happen? We are confident in our code because we have built it using our technology, which we spent 20 years developing. We can prove that it is correct. So, yes, I have grave concerns about that.

The third thing that I have concerns about is the optical character recognition that is used. We have concerns about the votes that are cast electronically using a computer, but the rest of the votes are cast by paper. So you say, "Well, they're cast as intended." Yes, they are cast as intended, but they are digitised using optical character recognition, and that is not 100 per cent foolproof. So they have some testing there where they randomly check a certain number of votes to make sure that they are what they are. But how do you know you have checked the right ones? Again there could be a challenge which says, "How do you know that the optical character recognition is doing its job properly?"

There are techniques of auditing elections which, again, I am happy to take on notice and report back to you about. What you can guarantee is that you keep the pile of paper votes and make it so that you can track any vote; you can find any particular vote quickly. You can do a post-election audit which says, "If you want a 99 per cent

guarantee that your count is correct, find me vote 3, vote 17, vote 58 and maybe 100 votes, and go and check them." If you can check that those are counted in the way that they were cast, you have a 99 per cent guarantee that the whole thing is right. If you want 99.9, you have to check 10,000 votes. If you want 99.99, you have to check 50,000 votes. So this thing increases, but it gives you more and more confidence in the counting.

In Denmark, for example, they do that. One of my colleagues is heavily involved with the electoral commission. They run what is called a post-election audit and they can track these votes and guarantee to whatever they desire. So you have to decide how many resources you want to put into this, and for that amount of resource we will give you a confidence rating of 80 per cent, 90 per cent or 95 per cent. If you are not happy with that, you have to put more resources in.

Electronic voting technology is still in its infancy. We do not know how to run a secure internet election. That is why I go to conferences. If Google can't protect its data, what is the confidence that the ACT Electoral Commissioner, running a system with a $200,000 budget, is able to project his or her data? You have no guarantees about the security of an electronic voting system on the internet.

MS LE COUTEUR: Ours, of course, is not on the internet.

Prof Gore: Right. As I said there are other problems with it.

MR MILLIGAN: There are still programming issues.

THE CHAIR: This question might be for Professor Moses. Can you hear me any better?

Prof Bennett Moses: Yes, I can hear you, thank you.

THE CHAIR: In your submission you talk about recommendation 4, that ACT elections should consider the repercussions of a formal challenge from a losing candidate. I know Raj has outlined bits and pieces from a data perspective, but I was wondering from a legal perspective if you could enhance what Raj has spoken about.

Prof Bennett Moses: It overlaps. I had trouble hearing Raj on the line; I think he might be further from the phone. I think it overlaps to this extent: if you have a challenge, what do you want to be in a position to do? You want to be in a position to be able to demonstrate, if you like, to provide an account of why that result is the right one—in other words, is valid. Coming back to the point where you are looking at what software you are using and what properties you want to have, you want to be able to make sure that the software you are using can do that—in other words, can provide that kind of thing.

To give an example, it is hard to know in advance what exactly the challenge would be, but if you have someone saying, "I do not believe that this software counted the vote accurately," if we just leave it as simple as that, can you subsequently demonstrate that it did or are you left with simply using an alternative method to check—for example, sending it back for a hand count and so forth? Ideally that is

what you would want to be able to do—to be able to have the software itself able to demonstrate the accuracy of the count as it was conducted. Does that make sense?

THE CHAIR: Yes, thank you. I appreciate your input. Raj, you have something to add?

Prof Gore: I have a comment about this, which is that the law is slowly catching up. In previous challenges, the High Court has asked for evidence that the result might have been changed. For example, in the WA debacle 1,300 votes were lost or something, and the narrowest margin somewhere was 34 votes, so clearly the thousand votes could have made a difference. Then what you should ask is: "Suppose the smallest margin had been 50 and they'd only lost 34 votes. What would the High Court have said?" The High Court may well have said, "Well, 34 votes aren't going to change the result, so we're not going to allow a recount."

Just four days ago there was a challenge in Kenya, where the President—I think it was a presidential election—was challenged. The High Court ruled that it is enough to demonstrate merely that procedures were not followed. They did not say, "You have to show that the result might have been different." What they said is, "Look, it's clear that this procedure wasn't followed, this procedure wasn't followed and this procedure wasn't followed." They annulled the election.

This is something new in the legal sphere, as far as I know. The opposition did not have to provide evidence saying, "Oh, if things had been different." They just had to show that the procedure was not followed. If our High Court takes that sort of view, all of these simplifications which we show to be ridiculous could be taken into account and they might call for an annulment. I do not know enough about law to say anything. It is just that a high court in another country with a similar legal system has come to a decision about procedures.

Prof Bennett Moses: More broadly, it is not simply a question of a decision that the High Court would make; it is a decision about the community's attitude towards the election itself. To take an example from a different country, let me look at the election of Donald Trump in the United States. That was a different issue; it was not about vote-counting software directly but about people saying, "Oh, there's all this suspicion about the vote count being wrong."

In a context where these kinds of discussions are taking place around the accuracy of the election results, you not only want a situation where you can demonstrate to a court that the vote was properly conducted, accurately counted and so forth; you also want to be able to have a situation where there is no question in the community about that. Questions like the ones that have been raised in the technical counting process can become the basis of all sorts of other theories, whether or not the vote was, in fact, right or wrong. People start worrying about it, and that can also create a community concern about accuracy.

THE CHAIR: Thank you so much. Does anyone have any further questions for our guests today?

MS LE COUTEUR: You said that you thought that your software would meet all

your requirements and was totally auditable. Have you suggested to the ACT Election Commission that they might use it? And what is the issue?

Prof Gore: "Thank you, but no thank you. We are confident that our EVAC system counts votes better than hand counting."

MS LE COUTEUR: That statement is almost certainly true, I would assume.

Prof Gore: Absolutely, yes.

MS LE COUTEUR: You talked about the vote-casting part. Because of being a candidate a number of times, I have not actually seen the counting; I have not actually scrutinised it myself. But obviously I have spoken to people who are scrutineers, and my understanding is that it is not all done electronically. From what you said, it sounded as though you thought it was and that there was a substantial human element, so anything that was in any way in doubt had two operators and scrutineers could look at it.

Prof Gore: That used to be the case in the old days. When we used to count by hand, the room was full of scrutineers from all the political parties.

MS LE COUTEUR: I am well aware of that, but I am talking about more recently, where it has been fully electronically counted. My understanding is that what you are talking about is turning the handwritten ballot paper to—

Prof Gore: To optical character recognition.

MS LE COUTEUR: Yes. My understanding—I should go back and talk to our scrutineers—is that that still has a substantial human element. I thought all of them were looked at by a human, but I may be wrong about that. Certainly my understanding is that anything where it is not abundantly clear is looked at by a human, and if the candidates have enough scrutineers, all of those have scrutineers behind them. I am absolutely confident that there is still a scrutineering process. We had scrutineers in the last election, and my understanding is that that is what they were doing.

Prof Gore: What you are saying is that if there is a smudged paper, the OCR does not pick it up properly and the system says, "I can't tell what this is," you figure it out.

MS LE COUTEUR: Yes.

Prof Gore: Okay, but that is not your problem. What if there is a systemic problem where every "8" is recognised as a "3". So it never complains; it just says every eight is a three.

MS LE COUTEUR: Okay.

Prof Gore: And off it goes. If you have a person in the hand-counting thing always counting an eight as a three, people behind are going to say, "No, that's not an eight; that's a three." It is the trust that you place in the OCR system. You assume that it

works correctly except when it says, “Sorry, I’m confused,” or someone pulls a power plug from it or something like that. And that is exactly the problem. The ACT Electoral Commissioner is sure that the vote counting is better and more accurate than by hand. I am absolutely willing to believe that. But that does not mean that it is correct. And once you count by computer, I think that a losing candidate will demand that it is correct. There are no people involved. Why should it make mistakes?

MS LE COUTEUR: Having spent many years in the IT industry, I know that it can still make mistakes, as effectively you have been saying.

Prof Gore: Just one point. The reason why it is easy to make mistakes in the vote counting is that our procedure is very intricate. If I were to try to explain it to my mother, I would find it very difficult to explain the vote-counting process to a lay person. There are so many oddities involved with fractions, transfers and things like that. It makes sense that people make mistakes when they first try to write a computer program for it. That is one thing.

The second thing is that once software becomes large, invariably it has bugs in it, and the vote-casting software is large because of all of the things that it needs to do. The advantage that we have with the vote-counting software is that we can specify it mathematically. We can write it down as a formula of logic and then we can go to the ACT Electoral Commissioner and say, “Let’s talk about it. Does clause 14 mean this, because this is what our logic says?” He or she can say, “No, it means something slightly different.” We can change our logic statement to match that. Once we have the logic statement correct, we produce the code automatically. We do not write code; we press a button and produce the code automatically. If our logical encoding of the Hare-Clark act is correct, our code will be correct.

In EVACS, what has happened is that the ACT Electoral Commissioner has sat down with a vendor and they have written up an English document that says, “This is what EVACS will do.” Then the programmers have gone away and said, “Now I’ll implement that.” But they make mistakes, because people make mistakes.

That is why what we have suggested to the Electoral Commissioner is the simple thing: “Just use our software. You have four years to test it.” And if there is a High Court challenge and someone says, “Prove to me that the votes were counted correctly,” we can. We can give them reams and reams of paper, which is a proof that the vote is counted correctly. If they do not understand it, they can go to the Stanford Logic Group, go to Inria Logic Group in France, go to the Oxford logic group, go to the Cambridge logic group and say, “Check these proofs for us.” The proofs can be checked automatically. In fact, the proofs can be checked by anyone with a third-year degree in computer science.

MS LE COUTEUR: So are you creating an open-source product?

Prof Gore: I’m sorry?

MS LE COUTEUR: Is your program an open-source program?

Prof Gore: Yes, it is on our website.

MS LE COUTEUR: Yes, very interesting. I did not know that the code behind the vote-casting part was not open source, because we had always been told by the Electoral Commission that it is all open source.

Prof Gore: No, it is not. It depends what you mean by open source. The correct meaning of open source is that you put all your code up on the website and anyone can download it and anyone can run it. That is not the case with the ACT. The vote counting is up there on the website, but if you want the vote-casting code, they send it to you on a CD and you have to sign a non-disclosure agreement. So it is not open source. It is available, but it is not open source.

If it were, for example, we could just have a software engineering class where we say, "Take this code and pick it apart." You would have got it verified for free by hundreds of budding computer scientists. This is where the vendor comes in. That is the IP of the vendor. The last thing they want to do is put it up on the website so that my third-year students can run their own election, set up their own company and run in competition.

THE CHAIR: Thank you very much.

Prof Gore: With the questions, can you email them to me or something—more specific questions than just, "We need some more details"?

THE CHAIR: Sure. A copy of *Hansard* will be provided to both of you when it is available. In there, there will be the specific questions, but we will also ensure that we get questions to you. This has been quite an interesting discussion. Thank you for tabling that. If the committee does have further questions, I am assuming that you are open to us emailing them through to you?

Prof Gore: Sure.

Prof Bennett Moses: Yes.

Prof Gore: I leave Canberra for five weeks on 22 September.

THE CHAIR: Thank you.

Hearing suspended from 2.59 to 3.25 pm.

ALEGRIA, MR STEPHEN, Acting Director, City Presentation, Transport Canberra and City Services Directorate
SLOAN, MR SEAN, Senior Manager, Licensing and Compliance, Transport Canberra and City Services Directorate

THE CHAIR: We will resume the hearing into the 2016 ACT election and the Electoral Act. I welcome representatives of Transport Canberra and City Services. Have you had a chance to read the pink privilege statement?

Mr Alegria: Yes.

THE CHAIR: Do you agree with all the terms there?

Mr Alegria: I agree.

Mr Sloan: I agree.

THE CHAIR: Before we proceed, there is one question I have been asking all witnesses, and I will ask you: are you affiliated with any political party?

Mr Alegria: I am not, no.

Mr Sloan: I am not.

THE CHAIR: Do you have an opening statement before we get started?

Mr Alegria: I think we are happy just to take any questions.

MR WALL: My understanding is that the reason we have called you here has more to do with the delegation of authority to rangers to deal with movable signs and that there appears to be some issue with the legislation.

Mr Alegria: We are responsible for the administration of the Public Unleased Land Act. As you know, the governance of movable signs and other signs is our responsibility. I will start with a general overview, perhaps.

MR WALL: Yes. I think there was some sort of informal agreement in the parliament that, with respect to an amendment to that act, since this committee was still inquiring and looking into that act specifically, any changes would wait until the conclusion. Maybe you could give us a rundown of the act and then where the legislative issues or gaps exist at the moment.

Mr Alegria: I know this committee is particularly interested in the movable signs, which include the election corflute signage, so I will focus specifically on that.

THE CHAIR: That would be fabulous.

MS LE COUTEUR: Can you also look at signs on trucks—the other movable signs?

Mr Alegria: Yes, we can look at that.

MS LE COUTEUR: I assume they are also yours.

Mr Alegria: Yes. As you may be aware, we have a movable sign code of practice that was introduced in 2013 under the act—a disallowable instrument. That was designed to put a framework around how these movable signs, including corflutes, are dealt with in the public realm. The idea is that we want to have a regime whereby people who wish to put out such signs can do so under a set of conditions without having to necessarily apply for specific approval each and every time they want to do that.

The code is consistent with the Territory Plan. The code prohibits signage on designated land which is under the auspices of the NCA. It provides guidelines about how big the signs can be, what they can be made of, the content and so forth. In terms of the management of that, if a sign is compliant with the code of practice, there is no particular issue that we as administrators of the act need to deal with. However, if there is a breach of the code or if a sign is not compliant, we may be made aware of that through a complaint, in which case our city rangers would go out and investigate that matter and take appropriate action; or, in some cases, we may become aware of it simply through patrolling and being out and about. In that situation the same thing may happen.

Most of the action we take is generally as a result of a complaint, when someone raises an issue with us. The city rangers investigate all complaints that we receive. We have a range of factors that we consider when we are dealing with how these signs are dealt with. The most important thing that we consider is public safety. If a sign is unsafe, if it is in a place where it is causing a hazard, we are able to remove that immediately. If a sign is not necessarily unsafe but it is simply not compliant with the act, we have a longer process to go through before we can actually remove that sign or get that sign removed. That is really the general gist. I am told that we had about 266 complaints in 2015-16 about movable and fixed signage. We do not differentiate at this stage. In the last financial year, 2016-17, we had about 240 complaints. So there are some.

THE CHAIR: And that was an election year.

Mr Alegria: Correct, yes. In fact, we found that the election signage issue was not as much of an issue for our agency in 2016, partly because we took a proactive stance in engaging with all of the political parties and candidates to make them aware of the code and what the requirements were under the code. We found that we had less of an issue, certainly from the public's point of view, about non-compliance. The factors around people's perceptions of how many signs are appropriate is a matter for the public, but from our legal point of view we found that we had relatively few complaints, especially compared with the previous election cycle. So that was pleasing. I think that points to the fact that the laws are there and they are important and we need to enforce them, but the communication and the proactive engagement are just as important.

MS CHEYNE: That engagement was with?

Mr Alegria: The parties and candidates.

MS CHEYNE: So if it was a major party, I assume it was the party secretary?

Mr Alegria: Yes.

MS CHEYNE: But if it was a minor party or independents, it was with the candidates; is that right?

Mr Alegria: Yes.

Mr Sloan: It was actually taken up with the representatives—

MS CHEYNE: No-one spoke to me.

Mr Sloan: The city rangers tried to engage, and they did that through the electoral office and got all the different details of all the contact people through them and then engaged with each party through that process. It was about just trying to remind people of the code of practice.

One of the biggest things in all compliance is education. It is about educating everybody about what the code is. There are certain requirements under the code. There are prohibited areas where signage is not allowed, and it is about letting people know what their responsibilities in managing the signs are. At the end of the day, although it is sitting in the public realm, it is still their property and we remind people of their responsibilities in managing their property.

Mr Alegria: Where things are not compliant and where this educational approach does not work, we do need to take action. In terms of a non-compliant sign that does not comply with the code, it is an offence potentially under the Public Unleased Land Act and we can take action in that respect.

MS CHEYNE: What action can you take?

Mr Alegria: We can issue an infringement notice.

Mr Sloan: Under section 28 of the Public Unleased Land Act it is an offence to fail to comply with the code of practice, and that is an infringeable offence.

MS CHEYNE: What can you do?

Mr Sloan: We can issue an infringement to the person.

Mr Alegria: A fine.

Mr Sloan: This comes down to Mr Wall's question about where we have limitations. One of the problems is about where a sign is deemed to be non-compliant and then we say, "How are we going to manage that sign?" If it is not posing a potential danger, it is about how we remove it. Right now we have to use the Public Unleased Land Act and we have to give a person seven days as a removal direction to actually remove

their sign.

MS CHEYNE: So you can't touch it?

Mr Sloan: We put a sticker on it and then we notify the candidate or the party. Currently, the legislation talks about the person who erected the sign. For us, that is even more difficult because then we have to try to—

MS CHEYNE: Yes, how do you know?

Mr Sloan: Correct. It might be advertising a candidate, but it might not have been the candidate who was in charge of putting that sign out.

MS CHEYNE: It might not have any candidate on it.

Mr Sloan: Correct.

MS CHEYNE: Looking at you, Liberal Party.

MR MILLIGAN: Were many infringements issued?

Mr Sloan: We do issue infringements. We issued infringements last year. For the election, no, we did not. We were able to do so because we were able to get compliance. From our side, it was actually deemed to be a huge success, because normally we go through an election and we are highly criticised for the way that we respond. But we engaged with the parties regularly and I had a ranger working very closely—

MR MILLIGAN: One?

Mr Sloan: A ranger working very hard. When I say that, TCCS at the time was TAMS, and we took a very different approach. Stephen is the head of a very large area. I run six city rangers and then I have a whole lot of domestic animal services rangers, another eight there. I used all my rangers to keep an eye on those things. What we did was engage all the people in the mowing contracts and all the people doing the tree-felling contracts and said, "Can you also keep an eye out on these signs, and where you find them to be knocked over, pick them up and let us know so that we can get them back to the depots, collect them from there and take them back to ours and impound them."

MR MILLIGAN: And more infringements were given to individuals or businesses and organisations—

Mr Sloan: Correct.

MR MILLIGAN: Compared to candidates of political parties?

Mr Sloan: That is correct. Again, I suppose we were able to do it because we knew it was coming and we were able to focus solely and hard on that. But it was an education. We found that, generally, for the code of practice, people were very

compliant with that, and with actually picking them up.

What our problem comes down to in the legislative changes that were suggested is that time frame. Where a sign is non-compliant—it is sitting on Anzac Parade, for example, which is a pretty good area—we have to put a notice on it. The whole purpose of the sign is to advertise, so while it stays in situ it is ironic that we have to leave it in situ and it continues to create the offence while we are waiting seven days for a person to comply. We try to make compliance occur faster where we can. But where a sign is deemed to be offensive or we do deem it to be, in this case, dangerous, we have been taking those signs. For the election, we took a very big approach and said that if a sign was non-compliant with the code of practice, which is best practice, we were deeming them—generally signs were—seen to be dangerous in nature.

MR MILLIGAN: After that seven-day period, were you able to remove the signs?

Mr Sloan: Yes.

MR MILLIGAN: Seven days is a long time.

MS CHEYNE: Seven days or seven working days?

Mr Sloan: Seven days.

MS LE COUTEUR: Were there many signs that you actually removed?

Mr Sloan: We removed a lot of signs that were knocked down, blown down. It is unfortunately this time of year again, when you look at it—

MS CHEYNE: Blown down rather lower.

Mr Alegria: With a lot of signs—how they ended up on the ground is a moot point—obviously they have become a hazard for mowing and for our general operations. It is certainly in our interests to hasten the process of getting them out of there.

MR WALL: Can you give an indication of how many were collected and taken back to the depot?

Mr Alegria: After the election?

MR WALL: During the election campaign.

Mr Sloan: Honestly, I could not tell you. I would have to go back and have a look and see. It was a large amount.

MS LE COUTEUR: A large number? Hundreds?

Mr Sloan: I would have to ask the guys and see what they actually impounded and see if they did record it. A lot of the signs that we get back are in a state where they are highly damaged, and we just dispose of those signs. It is more along the lines of public safety. Because of the wind and everything else that we get, they end up on

roads and on cycleways; they are certainly grown over. Then we have issues with the mowers going through and it becomes a danger to public and people if the mower hits those signs.

Mr Alegria: And there is not much incentive for the person involved to come and collect it if it is damaged.

MS LE COUTEUR: You said not many, but is it in terms of hundreds, thousands, tens?

Mr Sloan: I would have said less than a hundred signs were gathered.

MS LE COUTEUR: Really not many.

Mr Sloan: No.

MR MILLIGAN: How much is the infringement?

Mr Sloan: I think it is $150 for failing to comply with section 28. And it comes under the Magistrates Court Act for public unleased land.

MS CHEYNE: How many did you issue?

Mr Sloan: For that election? None. I do not believe any infringement had to be issued. That is what I said. For our directorate, it was seen as high, and it was. Because we took such a proactive approach on it, it was seen as a very big success.

MR MILLIGAN: How many infringements to non-political parties, to just community—

Mr Sloan: During the financial year?

MR MILLIGAN: Yes.

Mr Sloan: I would have to take that on notice and come back to you on it.

MS LE COUTEUR: Do you get involved at all with the 100-metre rule? As you would be aware, we are not supposed to put up anything of a political nature within 100 metres of a polling place. That is an additional rule, and one of the other issues that comes up is that things may be in a legal place so far as the public unleased land is concerned but be too close to the polling place.

Mr Alegria: For example, in a private residence?

MS LE COUTEUR: Private or public. A hundred metres is a hundred metres. Andrew at this point might bring out his usual photo. In the middle of the Tuggeranong Hyperdome was the 100 metres, and there was a forest of A-frames on the footpath.

MS CHEYNE: Just outside the 100 metres.

Mr Sloan: The answer is yes. Generally we are called on to take enforcement action. We try to work with the political parties where we can or with the electoral office. We try not to get too caught up in it, because it becomes very political for our rangers to be involved in, trying to measure that 100 metres and where it should all be. We generally try to work with people to get it. Where we do receive complaints, though, we have to take action, and we look at what we have. But we were not for any of that, as far as I know, through that election.

MS LE COUTEUR: Sorry, you said you did not get any complaints?

Mr Sloan: We did not receive complaints through our office in relation to that. It could have gone through us. I know the ACT electoral office received some complaints.

MS LE COUTEUR: Yes.

Mr Sloan: But we were not made aware of them on the day.

MS CHEYNE: I think the main way people complained was to the *Canberra Times* or on Facebook, rather than through formal channels. It seems to me that there are some deficiencies in the act or ways in which the act could at least be improved to help rangers. Am I right in reading between the lines that it would be very helpful to reduce that seven days to fewer days and perhaps also, particularly in cases where it is really non-compliant in a way that is causing issues with public safety, change it so that rangers could put their hands on them and take them away quickly without having to inform a candidate?

Mr Alegria: Certainly we can do that in safety. We can do an immediate removal. But in the other cases—

Mr Sloan: Under 105 of the Public Unleased Land Act, if there is an object in a public place we deem to be unsafe we can remove it on the spot. But you are right.

MS CHEYNE: So if I had a bit of a fortress on a roundabout and you could not see through it, you would probably go in and pick them up?

Mr Sloan: To answer your question, the Public Unleased Land Act, when it was drafted, replaced the Roads and Public Places Act. There was a clause under the Roads and Public Places Act—I believe it was 105 or 108 at that stage—which gave a ranger a power. If the sign was non-compliant with the code of practice, they could remove that sign on the spot. That is what we have sought again, and that is one of the legislative amendments that we are looking at, trying to push it up with part of the municipal service work that we are trying to do.

If it is deemed to be non-compliant, one of the issues, as I mentioned earlier, is signs that are offensive by nature. People may remember that we had some Sex Party signage that was put up during the election which was deemed to be highly offensive at that time. Leaving those signs on the side of a road for seven days while that party removed those signs does not seem to be in the spirit of the legislation. So there was a

direction put on those people by my rangers, by me. I said, "No. In the spirit of the legislation, we are going to remove those signs because they are offensive in nature." And we did. The party understood why we did it and worked with us on it, but at the same time, by the letter of the law, we do not have that power, which we used to have, to be able to remove non-compliant signage on the spot.

MS LE COUTEUR: Do you know why that power was removed? Presumably there was some reason?

Mr Sloan: From what I understand, it was more of an oversight than a reason.

MS LE COUTEUR: The other question I want to raise was about signs on vehicles. Close to where I am living, there is a place where this happens, not just in election time, though most often in election time. What do you do about them?

Mr Alegria: We will respond to a complaint in those circumstances. As I say, we either respond to complaints or we do proactive work. In that situation, it would be respond to a complaint. I do not have the figures on how many complaints we have responded to in relation to mobile billboards. I would suspect that their mobile nature would make them potentially difficult to keep track of. It is a bit like an intermittent problem that would appear and disappear at times. Sean, have you got anything to add?

Mr Sloan: The actual area crosses between two directorates. One is Access Canberra, and then there is us, because it is a parking issue as much as it is a signage issue. There is always a discrepancy between what is the actual function or the breach of the legislation that is currently going on. We do attend. We also deem it to be not only advertising but using public land for work-related activity. You need a permit to undergo that; we remind vendors of that. Unfortunately, when they are reminded of that, people usually move on. Because of Access Canberra's policy in relation to motor vehicles being parked causing the risk of harm model that they have adopted, sometimes it is very hard for them to be looking at compliance action as well. And, as Stephen alluded to, a lot of these people have gone by the time someone actually gets out to deal with them.

They have also got an approach that if the vehicle is unattended it is deemed to be parked; if someone is sitting inside it, it is merely pulled over. When the vehicle is unattended, Access Canberra usually does take action and issues parking infringements in relation to that. If someone is with the vehicle, again, it is hard to prove that they have not just stopped on the side of the road; it becomes a discretionary call.

MS CHEYNE: What if it is not a vehicle; it is a trailer?

Mr Sloan: Again, it is still deemed to be a vehicle under the legislation, and you have to be able to show that it is unattended. If it has been left unattended, we can even deal with it ourselves if it is deemed to be causing a problem. We can do that under road transport, as can the police. But, again, if it is a parking concern, we would be looking at utilising Access Canberra to come along.

MS CHEYNE: There are definitely no similar issues to the seven-day thing for corflutes? Just going on my own experiences, I remember that there were some candidates who had trailers, vehicles or utes and things that they parked, particularly in Ginninderra drive, heading out west on that kind of median strip area. I often saw them there or on Southern Cross Drive. I understand that people complained about them and they were moved quickly.

Mr Sloan: That is right. We put a removal direction on vehicles. We have to give seven days, as you have noted, for signage, but we have to give two days for a motor vehicle unless it is deemed to be unsafe. If it is unsafe in nature, we can actually remove it. Again, that is done at my level and higher. We make that call and say it should be removed because of the danger it poses to the public. If it is not posing that danger, though, that is where we have the problem and we have to put that removal notice on it and give people 48 hours.

MS CHEYNE: But it is only two days?

Mr Sloan: Two days for a vehicle.

MS CHEYNE: Okay.

Mr Sloan: That is exactly how we do the abandoned motor vehicles.

MS CHEYNE: Would it make more sense to be consistent? In terms of blanket signs, if there is a removal notice of two days for the removal of a vehicle, should corflutes also be two days? Would that be reasonable—to go from seven to two?

Mr Sloan: With the grace of the committee, I would still argue no. I believe that if a sign is by its nature or by its location non-compliant with the code of practice, it should be removed.

MS LE COUTEUR: It should be removed. They have not got enough resources to go back a second time and the signs are not worth that much.

MR WALL: In respect of this issue of the car, you might break down somewhere and it is inconvenient—

MS LE COUTEUR: The car is a bit different; it is worth something.

Mr Sloan: That is correct.

Mr Alegria: And the difference really is that—

MS CHEYNE: Corflutes are worth $5.

Mr Alegria: If we can identify the owner, that makes all the difference. With a vehicle with a registration plate, we can identify the person.

MS CHEYNE: Yes, okay.

Mr Alegria: A sign with someone's name on it—

MR WALL: Is that another issue, then, that needs to be looked at? If not the person that erected the sign, the person connected to the sign, the personal entity connected to the sign should be identified.

Mr Alegria: Yes. That would potentially make it easier for us to then contact somebody and say, "This is not compliant. Come and deal with it." It would give us the power to actually do something immediately because we do not have to wait for somebody to come and claim this uncollected object or whatever it may be. That potentially is a refinement that would make our job easier. As we said earlier, it did not make a huge difference in the context of the 2016 election because of the cooperative approach we had, but, as an improvement, I guess that is something that we would definitely consider.

MS CHEYNE: Right; so scrap the seven days. Is that what I am hearing, yes?

Mr Sloan: I think it would be nice. As Stephen just said, I think also understanding who the sign belongs to and who has erected it. Some sort of information on that sign where we can identify the owner would also be of benefit so that we can actually advise people where possible. With a lot of businesses, on the back of signs they have a label. On those signs it says who the sign belongs to and there is a contact number that we can contact. We can actually talk to those people. For different events we also have a limitation, under the code of practice, on how many signs people can put out. Those signs are numbered so that we actually know how many signs are out and so that we can identify where those signs are and what those signs are currently being used for. It is about a limitation on that as well.

MS CHEYNE: I need to get right in my head how this would work. You scrapped the seven days but then you also had the contact details on the back of it. Would you envisage that you could take the sign that is non-compliant, impound it and then go, ring, ring, "Come and get your sign," or ring, ring, "I'm fining you"?

Mr Sloan: Again, it would be an educational approach. We use engage, educate, enforce models. The first time will be ring, ring, "Hi, we've got your sign. We remind you of your obligations. It's impounded. You can come and pay for the impoundment to get your sign back." Then with further infringements that we notify, you would obviously start to say, "Is this a lawful breach?" And we would be looking at infringement action where appropriate.

MR WALL: What is the impoundment fee?

Mr Sloan: For a sign, again, I would have to find that for you and come back. The infringement is $150 for an individual for non-compliance and $750 for a party if it is deemed to be non-compliant.

MR WALL: Can you come back to us on notice, Mr Sloan, as to what the impoundment fee is for a sign?

Mr Sloan: Certainly.

MR WALL: Because if they are costing us around about $5 each but $10 to get back—

MS CHEYNE: Yes, we will be saying, "Thanks for cleaning up our signs."

MR WALL: "Keep them, thanks."

MS LE COUTEUR: No, another issue could arise when you put a sign out there. If the impoundment fee and other fees become too high, someone else, instead of just removing your sign, is going to put it in the place it is not meant to be. You will then get fined for it.

MS CHEYNE: You could get very creative.

MR WALL: We know where all the deviant thought comes from in the Greens.

MS LE COUTEUR: That would be a new way, the corflute law.

THE CHAIR: I have a couple of quick questions. You mentioned that obviously there are places you cannot put movable signs. I think you mentioned NCA land or designated land. Does the National Capital Authority have a city ranger-type person that patrols for signs on their land or is that still your jurisdiction?

Mr Sloan: The National Capital Authority does have rangers that do certain functions, but generally it is left up to us to clean up those signs. That is why it is under the code of practice prohibiting that. Then we take that action ourselves, because their legislation is silent on it. Therefore, the local legislation comes into play. That is why it is deemed back to us for the signage regulation work.

THE CHAIR: Does anyone have any further questions on movable signs while we have our fabulous—

MS CHEYNE: Is there anything else you want changed?

MS LE COUTEUR: Preferably relevant in some way to elections.

MS CHEYNE: Actually, I do have a more specific question. We have had a lot of people appear before us. One of the things that people talked to us about was limiting the number of signs, which personally I think is impossible—you know, saying each candidate gets 20. How would you know whether they have 20 out? Should signs be restricted to private land only, in designated areas only or, if it is not designated, being a lot clearer about where signs are and are not allowed? Does the directorate have a view on that?

Mr Alegria: I think we would try to keep out of the political realm and look at the signs from a point of view of—

MS CHEYNE: City presentation?

Mr Alegria: Yes, indeed. We have real estate agents that use the signs. We have community groups that use the signs. From one perspective, political candidates are another group that use the signs. They, in theory, may have the right to use the signs for their purposes as they see fit. It is once every four years. But, operationally, the changes that we have suggested would make things somewhat easier. It may be that all a candidate's signs could be in their electorate. But, of course, there will be party signs that relate to the wider party that maybe can go across electorates. I do not know whether there is anything from Sean's point of view that he can say.

Mr Sloan: I think where you have one is the biggest thing. As Stephen has already mentioned, at the end of the day the signs belong to the candidate. It is their responsibility to be managing them. I think it is very hard if they give somebody a boot full of corflutes and say, "Can you put these out for us?" and then there is no mapping for where you have put those signs. There should be a responsibility that you go back and manage those signs. It was interesting to watch some of the minor people in the last election who were running around with star pickets and hammers at night, popping their signs back up—erecting them all back up. Really, that is what is required. You need to have somebody who is monitoring—

MS CHEYNE: Totally. It is—

MS LE COUTEUR: Everyone was doing that, I assure you. Every party—

MS CHEYNE: Yes, it was a full-time job.

MS LE COUTEUR: was putting serious amounts of energy into that.

Mr Sloan: I think, moving forward, it would be good for our people to know that as well—just having those contact details moving forward, having somebody who is registered as a contact person for each group or each party representing those signs. We would know who we were contacting. It sounds funny, but even mapping where you are putting the signs; there is enough technology now to geo map where you place a sign. I go back to the same thing about numbering. If a sign shows up somewhere where it should not be, it also means that you can say, "We thought the sign was here. Somebody's moved that sign to cause a nuisance." We can follow that as well. We find some signs located in some strange places at times and we say, "I am sure a candidate didn't put the sign here."

THE CHAIR: I have one comment. It is actually a comment, not a question. Obviously, like everyone else, I had a number of corflutes. Apparently I had lots. I had a full-time person that did exactly that; he mapped where every single sign was. He was the only one that did the signs. He mapped exactly where he put each sign. He checked them twice a day every single day. He did all of it. But I would like to comment that every then TAMS, now TCCCS, employee that he came across whilst he was doing that was very respectful and very helpful. I had already briefed him, given him the code and discussed exactly what he had to do. But they were also very good—every single person that he came across. Because he was the only person doing it, he came across a few rangers in particular. But even mowers were all very helpful, very courteous. I would like to pass that along.

Mr Alegria: Thanks for the feedback. That is appreciated.

Mr Sloan: We do try.

Mr Alegria: We do try.

THE CHAIR: Do we have any further questions?

MR WALL: No. Thank you very much.

MS CHEYNE: Yes, thank you.

THE CHAIR: Thank you. The *Hansard* will be provided to you soon for any edits or corrections. I remind you that in respect of any questions taken on notice—I notice there were a couple—could you respond as soon as practicable? That would be much appreciated. That concludes today's hearings. I would like to thank everyone for appearing today.

The committee adjourned at 3.56 pm.