



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**STANDING COMMITTEE ON JUSTICE
AND COMMUNITY SAFETY**

(Reference: [Annual and financial reports 2016-2017](#))

Members:

**MRS G JONES (Chair)
MS B CODY (Deputy Chair)
MS E LEE
MR C STEEL**

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

MONDAY, 6 NOVEMBER 2017

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**Secretary to the committee:
Dr A Cullen (Ph: 620 50142)**

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

APPEARANCES

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Amended 20 May 2013

The committee met at 4.27 pm.

ACT Electoral Commission

Cantwell, Mr Damian AM, Electoral Commissioner

Spence, Mr Rohan, Deputy Electoral Commissioner

THE CHAIR: I officially open the annual reports hearings for the JACS committee. I declare open this session of the first day of public hearings of the Standing Committee on Justice and Community Safety inquiry into 2016-17 annual reports. On behalf of the committee, I would like to thank you, Mr Cantwell, and accompanying officials from the ACT Electoral Commission, for attending today.

The proceedings this afternoon will focus on the Electoral Commission's 2016-17 annual report and will conclude at approximately 5 pm. I remind witnesses that the proceedings are being recorded for Hansard, for transcription purposes, and are being webstreamed and broadcast live.

Before we begin, I remind all witnesses of the protections and obligations afforded by parliamentary privilege, which is covered on the pink privilege statement on your table. Could you please have a look at that and confirm for the record that you understand about privilege and the implications of the statement?

Mr Cantwell: I do.

Mr Spence: I do.

THE CHAIR: Thank you. Would you like to make any opening remarks?

Mr Cantwell: A brief statement, if I may.

THE CHAIR: Please proceed.

Mr Cantwell: Chair and members of the committee, thank you very much for your words just now and also your words of welcome. It is my pleasure and privilege to be here with you. I am honoured and thrilled to have been appointed as the new ACT Electoral Commissioner. I very much look forward to the challenges and opportunities ahead. I have met a number of the Assembly members. I look forward to meeting you all and getting to know you better. This is a very important opportunity for me to be able to learn more about my role. Clearly, I have only been in the job now—I think this is day 4.

THE CHAIR: Yes, we wondered how long it had been.

Mr Cantwell: The firehose is well and truly turned on! I am relishing the opportunity to absorb and learn from my colleagues and, indeed, from experiences such as this one.

You will note, of course, that because I have been in the job for only a few days, I am not best placed to be able to answer what might be your questions. It may likely be

that during your questions this afternoon I will need to defer to my colleague the deputy commissioner, Mr Ro Spence, who, during the period the report covers, was the acting commissioner. I trust the committee finds that acceptable.

THE CHAIR: Yes, of course.

Mr Cantwell: Otherwise we will do whatever we can to answer your questions here this afternoon. Thank you for your welcome and I look forward to an engagement.

THE CHAIR: Thank you very much. I might start with a general question. Obviously, it is quite early days for you, and I appreciate what you said about drinking from a firehose. The job you are in is quite a detailed one and it will take some time to get your feet under the table, so to speak.

In your swearing in, you said that you look forward to the challenges ahead for the commission. Do you have any early views on what those might be? As it is the first time you are appearing before a form of the Assembly, would you like to also give us some understanding of the experience you have had in the field of elections whilst you served overseas? That is something people have alluded to. For example, what was the technical nature of that experience and was it entirely paper based? Could you give us a little bit of an idea about how that all functioned?

Mr Cantwell: Certainly. It is early days and I am forming my opinions in a steady fashion. I would be reluctant to express any early views, as you have alluded to, on the challenges and opportunities. I would probably categorise those simply as being able to continue to fulfil the mission of the commission in the electorate, and I should say the legislature too, in improving standards, and building upon those that have gone before me and building upon the team.

My initial impressions, having looked through the report for 2016, both as I prepared for this afternoon and as I prepared for the appointment, are that the commission has done some extraordinarily good work for the people of the ACT and members of the Assembly.

In relation to your other question, as it relates to my experience in this field in the military, in early 2009, whilst serving overseas at the US School of Advanced Military Studies in Fort Leavenworth in Kansas, I was advised by the then career manager for Army that the Chief of the Defence Force at the time—Air Chief Marshal Houston—was considering appointing me as an officer working at headquarters of the international security forces in Afghanistan to organise the security and logistical support to the elections in Afghanistan in 2009. They were scheduled for August. So in late April—with not much more information than that—I jumped on a plane, flew back to Australia and told my wife and family, “I’ll come back probably in a week or two to pick you up. I’m sure it will amount to nothing. I’ll be back soon.” I saw them eight months later.

I got back home to Canberra. I was briefed very quickly that the CDF had taken up an opportunity to provide a senior officer to Headquarters ISAF, as it was known, to work for Commander ISAF to help organise the elections. I went into theatre in Afghanistan. I had been there a couple of times before on other operational tours, so I

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was pretty familiar with it.

When I got into theatre and was introduced to what was already planned for the elections, I realised we were a key part of the election planning team. It consisted of the other United Nations election authorities and the like, but we were all actually working in support of the Afghan government. It was their elections. And it was the first time, in 2009, that they were actually going to conduct this with international community support and, clearly, significant funding to be able to do so in the midst of an act of insurgency and a war, effectively.

It was an interesting experience. It opened my eyes to both the technical and mechanical issues of conducting nationwide elections, and to conducting those sorts of elections in an ongoing operational campaign; what the ISAF referred to as “framework operations”.

Having then moved to meet the ministers responsible for the outcome of those elections, the advisers to the President, the key ministerial advisers and the ministers for security, police, internal affairs and the like, I quickly realised that they each had a different interpretation or vision as to how those elections would be conducted. Clearly, they were influenced by a range of other actors. I would be reluctant to say that they were aligned; they simply had different views on what they wanted to see occur. So my role transcended from one of simply organising the international security forces logistics and security systems to helping them organise their elections.

I did that very carefully, though, not wanting to appear to be telling them how to run it, but rather to facilitate their better understanding. Clearly, I was relying upon the advice and the technical expertise of the United Nations electoral authorities in that space. Oddly enough, one of their key advisers was an Australian and it was jokingly referred to as the Australian-led Afghan elections. Clearly, it was not that, but we really focused hard on making sure they understood what was required.

It was a very challenging endeavour, both in an operational context and in a technical sense as well, as to how to ensure the elections were regarded and could be seen as full, fair and free elections. There were many interests, notwithstanding the Taliban and other terrorist organisations operating in Afghanistan, who saw the elections as opposite to their agenda. They did everything they could to actively disrupt it and to discourage voters from both becoming registered and then taking part on the day. It was an amazing experience.

When I saw this opportunity arise, when it was advertised recently, it piqued my interest because it was something that I wanted to try to understand better. I hope that I can bring some of those experiences to bear in this role. Again, as I said to the committee when I first applied for the role, I do not bring to the table the technical experience—I could not profess to say that I hold that experience—in elections, but I bring a range of other experiences around that space and in leadership and management that I think will be useful in this context. I look forward to those opportunities and to seeing how I can apply those in the future.

THE CHAIR: Thank you. The only other detail that I wanted to go to was around a different sort of tack, the 100-metre rule, and how-to-vote cards. I understand you

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may need to throw to Ro. The question is: how have we gone since the previous election period in getting people's feedback on the decisions made about the 100-metre rule? I do not know whether the commission is comfortable in giving a little background. I do not know if you are up to speed on it. There was essentially a change before the last election; not a change to the rules but a change to the interpretation, based on the fact that a lot of schools have fences now which previously did not. The 100-metre rule put candidates out in no-man's land, essentially, for handing out how-to-vote cards. Have you had any public reaction to the lack of presence at polling booths? Has there been any confusion about the lack of how-to-vote cards or recommendations on how to improve the use of this rule?

Mr Cantwell: I will need to throw to Ro to answer some of the detail. I am aware of the issue. The Speaker made me aware of it along the way, and I can understand how it would be held to be contentious or that you would need to clarify how that sits. With your indulgence, I will hand over to Ro.

Mr Spence: In terms of whether there has been any public feedback in relation to the 100-metre rule, I would say that it has been limited, if in fact there has been any. The area in which that has been raised has been in the committees, indeed, in the select committee that is currently looking into the 2016 election and the Electoral Act. It is quite likely that that select committee will raise this as an issue in its forthcoming report, and we will look at that recommendation and make comment against that, if and when—

THE CHAIR: As part of the report for the other committee?

Mr Spence: Yes, the select committee.

THE CHAIR: I do not want to tread on the other committee's toes at all. I just wondered if you had had any feedback or questions about how on earth people can get how-to-vote cards when they cannot find anyone at the booth. We will go to questions from Ms Cody.

MS CODY: With the postal survey that is currently happening about same-sex marriage, what impact did that have on enrolments in the ACT, and what ongoing impacts and consequences do you think that may have?

Mr Cantwell: How do you define "impacts"?

MS CODY: Did we increase enrolments or did we lose enrolments? Was there any negative or positive impact relating to the push to get people enrolled, because of the postal survey? Do you think there will be ongoing impacts because of the postal survey? I just want to get a sense from the commission.

Mr Spence: To be honest, I have not had a look at the enrolment figures since that particular close of rolls, if you would call it that. However, my understanding is that they had quite a significant close of rolls nationwide. However, the impact of close of rolls is somewhat diminishing, I would argue, in the face of direct enrolment. Since 2012 direct enrolment has been a scheme for, as it suggests, directly enrolling electors, and that has had a very positive effect, particularly on youth enrolment, which

currently sits at 97 per cent for 19-year-olds in the ACT.

THE CHAIR: Some have referred to it as the electoral conscription act.

Mr Spence: That has had a very positive effect on enrolment nationwide, and definitely within the ACT. In terms of ongoing effect, those people captured by the roll close will now be on the roll until they are un-enrolled as a result of either an objection or they die.

MS CODY: Yes, or move out of the ACT.

Mr Spence: Or leave the country. If they move out of the ACT they will still stay on a roll. It is one roll, the commonwealth electoral roll, which the ACT is a section of.

THE CHAIR: Are you able to take on notice the increase in numbers that occurred in the ACT during that period?

Mr Spence: If you can specify the period that you want me to—

THE CHAIR: Since the announcement of the marriage survey to the date that they closed—

Mr Spence: Yes, to the close of the rolls.

THE CHAIR: their rolls, for that purpose.

Mr Spence: We can take that on notice.

MS LEE: I echo the chair's welcome, and thank you, commissioner, for fronting up to the committee on your fourth day on the job. I have a question about electronic voting. We saw a huge spike in the 2016 election, with almost, I think from the report, one in three who were choosing to vote electronically. Anecdotally, I have also heard some feedback about some of the ways that it could be improved, and I am wondering about the commission's perspective on that. I noticed that in the report you foreshadowed upgrading some of the systems. Can you give us a bit of an update on some of the particular issues or capabilities that you are looking at to improve the electronic voting?

Mr Cantwell: I was pleased to see that as a result in the report. It is one of those things which I am scheduled to discuss with my state and federal colleagues next week during a series of meetings. I am looking forward to having some of those discussions with them to elicit their views and see where they are at. I understand that the ACT is quite progressive and leads in many respects in that space. That is something we should all be proud of. I think there are some opportunities there which we can continue to investigate. I have been briefed in the past couple of days that there is money set aside to do that and, as you indicate, to examine how we can continue the work in that space.

Mr Spence: As you stated, about one in three Canberrans used electronic voting in the most recent ACT election. We exit poll largely people exiting pre-poll centres but

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we also exit poll on the day in other polling places. The exit polls give very strong results in confidence and trust in that system, and also in ease of use: in the 90 per cent range. It has been in use in the ACT since 2001, so there is an ever-growing confidence and experience in that system.

But, as you have highlighted, it is very common for people to question the navigation of that system. It uses a keypad to navigate around the ballot paper and to make preference selections. Whilst there are good reasons for that, it is an area that we often get questioned on. So we commissioned earlier this year a full review of electronic voting in the ACT, somewhat in reaction to the Auditor-General's recommendation that the commission foster an increase in electronic voting in the ACT. Following that review, we have drafted a concept brief in line with the budget process, aimed at seeking money to upgrade electronic voting in the ACT.

The underlying technology is ageing. It is largely unchanged since 2001. It has had minor adjustments in between each election. So we are looking at that. That concept brief is proposing to upgrade the underlying technology to increase the security, the robustness and some of the transparency and security around that system. We are also looking at introducing touch screen navigation to that system. We are aware that that is what the community is coming to expect. We have to do that very carefully, because we need to maintain a system that is usable by blind and vision-impaired voters, and touch screen has its challenges. That is not necessarily saying it is impossible, but we need to work closely with that community to ensure that any change still meets their needs. That potentially could mean two separate systems, or one system that serves everyone, which is not beyond possibility. We will work very carefully with them. The other aspect is that we are proposing to introduce a telephone voting module of electronic voting to assist blind and vision-impaired people voting from home.

THE CHAIR: Would you need to be registered for that or something?

Mr Spence: We have not worked out the details of that. Once we know whether we have got the funds for that, or as part of the business case to support that, we will delve into those details. The system itself, as it currently stands, uses a telephone keypad for blind and vision-impaired people to navigate the system. It just does not have the phone component. So it is actually very well designed to suit an over the telephone vote cast.

THE CHAIR: Going into that same system, being collected by the same data?

Mr Spence: Indeed. It would just be an additional module that is not currently there.

MS LEE: It seems that the commission is already engaging quite well with the community of vision-impaired Canberrans. Have you had any feedback from Canberrans living with other disabilities about how the voting system, electronic or otherwise, can be improved for them?

Mr Spence: Yes. We have established a disability advisory committee. That was established prior to the 2016 election. We opened that committee to peak bodies and individuals of interest. Uptake of that in the lead-up to the election was very

enthusiastic. We had some very good conversations around not only blind and vision impaired but also the concepts of disability access to polling places, access to information, audio and some of those key information brochures. We work very hard to meet those needs, and we think we do it quite well. The committee is very supportive and very useful in offering suggestions. That is an ongoing committee. We met recently, maybe a month or two ago. It is planned to meet at least once a year in the lead-up to an election year, and then we will meet more regularly from that. They are commenting at the moment on a couple of our fact sheets that we developed in 2012. We are just aiming to improve everything we do to meet the needs of everyone in the ACT and the very specific group of electors with a disability.

MS CODY: I want to know the guidelines or the framework, whichever is more appropriate, for whether to grant an extension of a fine from an election period.

THE CHAIR: If someone has not voted?

MS CODY: No, I am talking about fines to organisations. We heard in the last annual report hearing that there were some organisations that received fines as part of the 2016 elections. I am wondering what the guidelines are around granting an extension to pay those fines and if there are currently fines outstanding.

Mr Cantwell: Yes, there are. In fact it is a matter of discussion between ourselves in the commission and one of those parties that is referred to in the report, ClubsACT.

MS CODY: I did find it in the report and then lost it.

Mr Cantwell: That is ongoing but we are advised that it is going to be resolved very shortly this week. I will defer to Ro for what might be a technical interpretation of the issue around extensions by which those fines can be resolved. Having looked at the case of ClubsACT in particular, noting that the other two that were mentioned in the report have been resolved, I think it is reasonable that we should work through every opportunity with whomever is at question here to ensure that they are getting opportunities to respond within the process to a fine or penalty that might be applied for overstepping or breaching the requirement. I think we have done that. I will get Ro to talk to the detail as an example of this particular case. As I said, I think that is going to be resolved, on advice from the other party, very soon this week.

Mr Spence: I am not sure I have much more to add to that. In terms of formal guidelines the act is silent on time frames. It purely prescribes, in respect of this particular matter that we are discussing, a penalty for overspending the electoral expenditure cap. That is the limit of the Electoral Act. There is nothing in terms of the period in which they have to lodge a reason for their over-expenditure. That is set by the commissioner, and any agreed upon extension is also at the discretion of the commissioner.

MR HANSON: The redistribution for the 2020 ACT election is a mandated process but there is some latitude in there. From recollection, with the redistribution for 2016 one of the issues was getting data from the ABS. Part of that process is to go to the ABS and get some data, and then that informs where you are going. Is that provision of information from the ABS within the two-year period leading up to the

election? Is it within the mandated period or can you get that data when you like?

Mr Spence: That is a good question. I would have to take that one on notice. I would have to look at the Electoral Act. I believe that if we requested that data outside the redistribution period we could work with the ABS to do so. That would, however, be outside of the mandated redistribution period.

MR HANSON: I think it took a little while, from recollection. Whether it was the receipt of that information within the mandated period or the request for the information, that seemed to delay the process somewhat, which then meant that the redistribution itself was closer to the election, which is not in anybody's interests.

Mr Spence: The first part of a redistribution process is the establishment of the redistribution committee. It is common practice for one of those positions, the member positions, to be the head of ACT statistics from the Bureau of Statistics. That tends to be the mechanism through which we access that data. Requesting that information outside that redistribution committee and that formal establishment—I would have to look at the act and potentially discuss with the ABS.

MR HANSON: I just do not know whether, with the act as written, there is a particular delay. Maybe I am incorrect here but I am sure that it was not considered that there would be an extensive delay. Sometimes the redistribution can be complex and vexed. Certainly for 2012 it was, was it not?

Mr Spence: Indeed. It was the biggest and most boundary-changing redistribution we have had since '95.

MR HANSON: Could you have a look at that? Have you had a chance to look at whether the redistribution for 2016 was about right? Have you, on receipt of all the votes, looked at whether the estimates were accurate? A fifth of the ACT plus or minus five per cent or whatever; did the result reflect the estimate? And if not, why not?

Mr Spence: We do have that information. The actual enrolment in Brindabella was negative 5.33 per cent below the quota, the quota being plus or minus 5 per cent. It is apparent from these results that the enrolment projections used at the 2015 redistribution overestimated the expected growth in Brindabella and Ginninderra and underestimated the growth in other electorates. So it was incorrect in Brindabella by 0.33 per cent. And if not, why not? Because you are predicting growth within the community, and if it does not meet your predictions that is the result. In each of those other four electorates it was within the bounds.

MR HANSON: It strikes me, driving out to areas like Molonglo and seeing continuing growth in Gungahlin and so on, that there will be significant changes again, potentially.

Mr Spence: Indeed. Molonglo Valley since the redistribution in preparation for the 2016 election has grown considerably. Each redistribution needs to be looked at in its own data. There is no forward projecting to the 2024 redistribution. That is not provided for in the act, so it must be looked at in those terms. Any growth in, or in

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fact movements out of, an area must be predicted, and sometimes they are incorrect.

MS CODY: I know that it is not necessarily you guys, but how is it looking for the third federal seat? Obviously that will mean a redistribution of the two federal electorates. Have you been involved in the planning for that at all?

Mr Spence: No, and there is no room for the ACT Electoral Commission in that process.

MS CODY: They do not have any involvement at all? You just get told that that is what is happening?

Mr Spence: Indeed.

Mr Cantwell: It is an interesting question. I will personally mention that next week when I speak to federal and state colleagues: how that process is proceeding and where we might learn from that process.

MS CODY: That is exactly the point I was trying to make. We do have a really massive change, as Jeremy and Giulia and I are all very familiar with, in the Molonglo Valley.

THE CHAIR: Yes, we went from representing 120,000 people to 40,000 people, so—

MS CODY: But even the size of the Molonglo Valley and how much it is changing and growing—

Mr Cantwell: It has, yes.

MS CODY: If we can learn from what happens federally it might just help us.

Mr Cantwell: Exactly right.

Mr Spence: The most recent redistribution was using quite old censal data.

THE CHAIR: Yes, we have had a census since.

Mr Spence: We have had a recent census. It is likely that that will add to the accuracy of our predictions.

THE CHAIR: The suburb of Kambah is a very big suburb. Has any consideration ever been given to splitting it in previous distributions?

Mr Spence: The answer to that is no. We work very hard in the ACT to avoid splitting any suburb. We have never done that.

THE CHAIR: It is one of the biggest in the southern hemisphere apparently.

Mr Spence: I will defer to the Electoral Commissioner as to whether they have plans

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to do that in the future, but in all previous redistributions we have worked extremely hard to ensure that suburbs are not split.

THE CHAIR: We will close off our hearing. Before we do, I have a number of small administrative matters to highlight. Answers to questions taken on notice—I think there was one—should be provided to the committee office within 10 business days.

Mr Spence: Two.

THE CHAIR: There were two, thank you. That is 10 business days after the receipt of the uncorrected proof *Hansard*, day one being the first business day after the uncorrected proof *Hansard* is sent to Mr Cantwell by the committee office. All non-executive members may lodge questions on notice after this process. They will be received by the committee office within five business days after the uncorrected proof *Hansard* is circulated, day one being the first business day after the uncorrected proof *Hansard* is sent to you by the committee office. Responses to questions on notice should be provided to the committee office within 10 business days of receipt of the question, day one being the first business day after the questions are sent to you by the committee office.

On behalf of the committee, I thank you all for appearing. May there be many more conversations like this. When available, a proof transcript will be forwarded to all witnesses. If something in the transcript is not quite what you think you said, you then have an opportunity to come back to us.

The committee adjourned at 5.01 pm.