



**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**STANDING COMMITTEE ON THE INTEGRITY COMMISSION AND  
STATUTORY OFFICE HOLDERS**

(Reference: [Inquiry into the operation of the 2024 ACT Election and Electoral Act 1992](#))

**Members:**

**MR E COCKS (Chair)  
MR A BRADDOCK (Deputy Chair)  
MR T WERNER-GIBBINGS**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**THURSDAY, 27 NOVEMBER 2025**

**Secretary to the committee:  
Ms K de Kleuver (Ph: 620 70524)**

**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.

**WITNESSES**

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*Amended 20 May 2013*

## **The committee met at 3.00 pm**

**CANTWELL, MR DAMIAN**, ACT Electoral Commissioner, ACT Electoral Commission

**SPENCE, MR ROHAN**, Deputy Electoral Commissioner, ACT Electoral Commission

**THE CHAIR:** Good afternoon and welcome to the public hearings of the Standing Committee on the Integrity Commission and Statutory Office Holders for its Inquiry into the Operation of the 2024 ACT Election and the Electoral Act 1992.

The committee wishes to acknowledge the traditional custodians of the land we are meeting on, the Ngunnawal people. We wish to acknowledge and respect their continuing culture and the contribution they make to the life of the city and this region. We would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander people who may be attending today's event.

This hearing is a legal proceeding of the Assembly and has the same standing as proceedings of the Assembly itself, therefore today's evidence attracts parliamentary privilege. The giving of false or misleading evidence is a serious matter and may be considered contempt of the Assembly.

As we are not inviting opening statements, we will proceed directly to questions. I want to go straight to recommendation 10, which looks at questions around public funding and expenditure and in particular the fact that several parties, including the Greens, Independents for Canberra, Fiona Carrick Independent and the Belco Party, received more in public funding than they reported in electoral expenditure. Clearly that raises some concerns. I would like an expansion on your thinking around this recommendation and how our system compares to other jurisdictions.

**Mr Cantwell:** Thank you for the question. The expenditure notes and the recommendation 10 in the election report along with the table 16 outlined the issue which we have raised here that is, in essence as you you've described—that the level of electoral funding, public funding, in accordance with the act that is provided to those parties who win the necessary number of eligible votes, receive the payment as a means of public funding, and that means under the current requirements of the act that in some cases, as indicated in table 16, that exceeds the actual expenditure. And it has been raised previously, I think in hearings, perhaps even in the last election and maybe earlier, that that does not seem right and how is it that some of the parties are receiving such moneys in excess of their demonstrated or declared expenditure.

What the commission has considered here is making a recommendation that the Assembly investigate the means by which that might be adjusted or amended in a legislative sense so that it is equitable—that is, you are only receiving that which you expended by way of public funding.

We are unique in this situation as the report outlines, and there are other models that could be looked at in such a review or examination by the Assembly. They include a reimbursement model that is on evidence of the expenditure incurred by the political party. Then the public funding would not exceed such a level of evidence of expenditure. Or there could be other ways, including an adjustment of how electoral

expenditure is defined.

I know when this has been raised in other hearings, whether it be election hearings or annual report hearings, members of the Assembly have indicated their concern on behalf of their party that they expend more than that which they are able to clearly define under the act as electoral expenditure. So there are things that such a review or consideration of the legislation by the Assembly should take or might care to take, and it could include such factors.

I might, if I can, ask Ro if he has anything that might be worthy to highlight further , but that is the essence—trying to make sure it is equitable.

**Mr Spence:** I do not have a lot to add to that; I think Damian has captured most of it. Public funding is only one source of funding; there is private funding as well. So there are avenues for political parties and political participants to receive funding to support their electoral campaigns. There were some parties in the 2020 election that public funding exceeded their expenditure. It has occurred again in 2024, and for some parties and participants significantly more. You can see in some of these figures 400 per cent, 236 per cent higher than their expenditure. That is just raising it for the Assembly's considerations.

**THE CHAIR:** So it seems like the concern fundamentally is the idea of profiting off an election. Have you done any analysis on the idea of expanding the definition? I noticed the type of expansion you were talking about was bringing in things like administrative expenditure. Have you analysed whether that would be likely to shift the dial for those parties that have profited off the election? I ask because it seems that those who are in that situation are those less likely to have higher administrative expenses.

**Mr Cantwell:** I have not done any detailed examination, and I think it would fall upon the political parties or candidates to work through the detail, visibility of which we may not necessarily have, to properly understand how that might alter the equation of calculations. But I think we have raised here in the context that it is one of those elements which needs to be considered in such deliberations as to how to address this matter.

Changing the definition of electoral expenditure will have impact across other aspects of the act and disclosure provisions. So there would need to be a broader and more holistic review. The commission stands ready, of course, to provide advice formally and informally along the way to such deliberations as best we can on our understanding of the act and how it might impact the process of both declaration of such expenditure for capturing of funding and disclosure provisions and also in terms in this case public funding.

**THE CHAIR:** You have also recommended treating prospective registered parties as if they were registered from the start of the cap expenditure period. I can see the potential risk there in terms of an organisation existing as a potential party for a large part of that period and then ending up effectively double dipping on the cap. Did you see any evidence of that in practice or any examples where that was possibly the case during this election?

**Mr Spence:** I do not think the evidence is there that they are deliberately double dipping on the expenditure caps, but there is definitely the scenario where political parties are active but they are not yet registered. We are in consultation with them. They are asking questions about their disclosure obligations, their expenditure caps. At the time they are not a registered party. It is an open question to what they actually are—a third-party campaigner at that point—and do they need to be putting in multiple election returns one as a third-party campaigner for the period before they registered and then when they are registered.

The recommendation is really to clarify how reporting obligations would function for those entities that undertake campaign activities, have expenditure and are receiving gifts prior to their formal registration. It does not seem in anyone's interest to require multiple election returns. So a prospective political party seems to be a fairly logical approach.

**MR BRADDOCK:** Do you accept that the current definition of electoral expenditure as defined by the act is quite narrow in terms of it is capturing advertising and advertising-like activities but it is not capturing other activities that parties may have as a part of a campaign?

**Mr Cantwell:** As we have indicated in the report—and I think I alluded to this in the previous answer—there is some scope for information on how that might be amended. Again, we are happy to provide advice in those deliberations, of course.

Whether it suits the requirements as it was intended going forward and the nature of expenses that political parties incur is another question. Again, I make the point that if you can adjust how it is defined, because it plays such a key part in application or other parts of the act, you need to be careful about how that ends up having perhaps unintended consequences.

**MR BRADDOCK:** But you are still accepting there is expenditure that a party could conceivably have that is not reported under electoral expenditure because it does not fit the definitions of those advertising and other matters under the act.

**Mr Cantwell:** Yes.

**MR BRADDOCK:** I note your report does not include the word “profit” once. Can I just check with you, because I noticed Mr Cocks used it and I think that is a bit of a slander on not-for-profit entities like parties. Are you accusing them of profiting?

**Mr Cantwell:** Of course not.

**THE CHAIR:** To be clear, I was using the term in the colloquial sense of more money in getting than money out rather than a profit-making entity.

**MR BRADDOCK:** My question is about artificial intelligence. Is it actually AI that is the problem, or is the more fundamental issue misinformation, disinformation and impersonation that the AI is enabling or propelling?

**Mr Cantwell:** That is a great question and one which we should all consider more

broadly, not just in this domain, but how it affects society. But for a broader response, ultimately it is about the power of misinformation and disinformation and how it can impact people's understanding or awareness or acceptance of what is genuine, what is something that can be trusted in the political process and something which they can readily validate that is worthy of consideration and contains factual matter that they can make political decisions based upon how to vote ultimately.

AI is advancing in our acceptance across not just the political context but more broadly so quickly, and it has, as we all know, some very positive aspects to it. But I am not sure if we understand fully how it will and continues to impact the political process. Everyone's dealing with this; every other jurisdiction is grappling with this matter as well. You might know or recall that South Australia has sought to address the potential for AI-generated videos which falsely depict a political candidate or other person doing something or saying something that looks for all intents and purposes to be real. There was the case most recently of a video of the Western Australian Premier purporting to endorse a commercial financial product. I looked at the video and I could not tell that it was fake. It is changing and improving so quickly that it is very hard to tell one from the other.

So all we would offer in this space is that there is a clear impact in the misinformation and disinformation space. It can supercharge false narratives. And increasingly where society seems to be basing all their decisions on a 5 or 10-second video or soundbite or some sort of description, I think we need to be alert to those risks. The commission can only do so much. We are alert to this. We understand what other jurisdictions have done. South Australian have legislated that an AI-generated video—correct me if I am wrong on this; I do not want to misspeak on behalf of the South Australian commission—must have the endorsement of the person that the video is depicting. So the intent would seem to be to remove the risk that someone's generated a video of a candidate saying something to be completely false and not having some other means by which you can validate it. If it is not endorsed by the candidate being depicted, then it cannot be portrayed. Again, I will be careful not to misspeak of the South Australian legislation in practice there.

Other jurisdictions are considering this. I think the AEC has made recommendations to JSCEM at the federal level, and we are all trying to understand how this might impact on that fair and transparent political process. Our information campaigns, as I said, can only do so much. Check the source asks recipients of all political information to make sure they understand that information is from a valid source, is safe, is something they can trust, is enduring, is relevant to them and so forth.

But AI-generated content of any sort can appear to be so real that it can be taken to be true, and we need to be alert to that. I do not have all the answers, but I think we all need to think carefully about what that means. The commission stands ready to provide advice as we see it on how that might impact the political process here in the ACT.

**MR BRADDOCK:** You mentioned the South Australian model. I am interested in the Tasmanian model where advertising that contains the name, photograph or likeness of a candidate or intended candidate cannot be used without the written permission or consent of that candidate. Have you had any engagement with Tasmanian Electoral Commission or do you have any appreciation of their approach and whether that might

work?

**Mr Cantwell:** It is early days in the discussions as respective legislation or processes and procedures take hold. I have not had the detailed discussion with my counterpart in Tasmania. But as you know, we have open and constant forums with them all the time as well as all other jurisdictions. I will certainly be engaging with all the commissioners and staffs. Ro has a very active role in the deputies forums at the practical and legislative level. Each of the respective teams interact with each other all the time. So I am confident we have got the right forums in place to engage and learn from the sorts of policies and legislation you have referred to there.

**MR BRADDOCK:** Are any jurisdictions doing an excellent job that we should be looking at as a committee as part of our inquiry?

**Mr Cantwell:** I think South Australia has taken the lead in the fake video space. They have applied it quickly and it is in place for the upcoming state election. So that is something we are going to learn from and see how that is applied. I had an ECANZ meeting the other day in Melbourne where the council briefed on their intent in that space, and we are looking forward to seeing how that plays out.

But AI and how it is being applied in the information space let alone the misinformation and disinformation space is changing so quickly that it is something we need to keep an eye on very closely. We would like to be as proactive as we can, hence the recommendations or the thoughts we have provided in the report.

Of course, I have fielded questions of this nature in the media occasionally when one of these videos surfaces and it prompts a question of me. I have responded in the same way publicly as I have here today—that it is something we all need to be aware of. There are some very strong benefits to such tools at our disposal in generating and processing information, but it is becoming evident that in the political process it carries some dangers we need to be aware of.

**THE CHAIR:** Mr Braddock made a very good point that AI can really be considered one of many tools for misinformation, disinformation, generally misleading advertising and statements. I was reading in the report there were about 32 complaints about misleading advertising. Only one of those was upheld, which of course was the inaccurate and misleading advertisement targeting Ms Castley. I understand the complaint about that was submitted on 1 October and the issue was not resolved until 18 October. Can you help me understand why it took so long to deal with that?

**Mr Cantwell:** I acknowledge that we would all wish to see allegations of misleading advertising being investigated promptly and thoroughly and a determination being made fairly and impartially and that determination then delivered and acted on and evidence produced that that determination has been acted on. As the commission made the point in advising the Assembly when this legislation was first proposed, the initial standpoint was that the commission would rather not be involved in this space because we believe it brings risks to the commission's impartiality and the public perception of how we stand in this process.

Notwithstanding that, the time needs to be taken to properly investigate and for each

party to be given an opportunity to fairly state their case as to why it may or may not breach the legislation related to misleading political advertising. I need to receive that, and consider it, and I may need to take advice as it determines my decision and then promulgate it. We stated at the time and we have always stated in our publicly available policy on how the legislation is enacted in the commission that that may unfortunately go even beyond the period of the election voting, and increasingly so if that allegation is made late in the election period. In that case there is more chance the consideration will go beyond the election period or at least to a point where it is difficult for electors to have received all the due information they should receive and to make a decision as to how that may impact their voting and to vote accordingly.

I am confident that the commission acted with all due process in accordance with its published policy and with all due expediency. It was important that with the application of this legislation in the first instance—and to date this is the only instance in which I have had to make a determination that it breached the legislation—that I got it right. I also wanted to make sure the decision was made known publicly as soon as I could and within the voting window. We were well on the cusp of that.

Yes, I would have preferred to have had it resolved. Actually, I would have preferred not to have been involved at all in the first place. But there we were and we had to enact what we had to do. Could we have done it differently or faster? I say no, I could not have done it any quicker. I am confident that we did everything we could in the time. We had legal advice available to us. I commend the GSO for providing us dedicated support in this regard, not just for this legislation but across the election, whereby they provided a dedicated legal effort to support me in understanding how to best apply the legislation.

**THE CHAIR:** The question for me in considering where we can go with these things is the time that was taken, how much of that was to determine whether the information was true or false and how much was invested in working out the more procedural elements of compliance or otherwise with the legislation?

**Mr Cantwell:** I will have to take on notice the specifics of the breakdown of the time across the process as described if I cannot answer it now or if I cannot recall.

**THE CHAIR:** It is okay to have an estimate.

**Mr Cantwell:** Sure. But if I could say one thing: the legislation speaks to misleading electoral advertising. It does not speak to true or false. So what I need to do is make my best determination in accordance with the Act as to whether it is in breach of the legislation—that is, whether it is misleading or otherwise. I know people say the commissioner has become the arbiter of truth. I do not regard myself as the arbiter of truth. My role in this regard is to determine, with advice, whether it is in breach of legislation that speaks to misleading electoral advertising. There is a subtle but important difference.

I am not making a brash determination that something is true and that is false but, rather, whether a particular electoral advertisement which meets the criteria contained in the act—and that is a series of hurdles which are pretty hard to jump over—is simply misleading and has breached the act. So that is the way it is played out.

**THE CHAIR:** The reason I am interested in this beyond just this specific instance is there were also some problems I observed during the federal election where one party had volunteers handing out flyers indicating a preference order for another party which were very clearly designed to deceive people into a different way of voting than that party would have suggested. Would that type of action also be caught up in the definition of misleading advertising, and is there anything that can be done when these actions happen on election day?

**Mr Cantwell:** I cannot talk to specifics in another jurisdiction's outcomes or processes, but we all know there are a number of electoral offences contained already within the act, which may or may not cover the circumstances you have described whereby someone is seeking to deceive or mislead. The definition of misleading advertising is another step to assist all of us overall to understand what information we can rely upon in making our decisions related to voting and how the candidates stand up within that space. So I suppose it just gives rise to further consideration about how complicated this space is becoming.

Coming back to AI, these things are going to turn up with increasingly apparent accuracy and legitimacy across all forms of information networks and they are going to be supercharged by their degree of repetition and the apparent accuracy and reliability of their message. So we all need to be pretty careful about it.

I think I have connected the two lines of our position here, but we have raised this in a broader context in the report so as to encourage a broader debate about it in the Assembly. Again, we would be happy to assist in those thinkings.

**MR WERNER-GIBBINGS:** You mentioned misinformation and disinformation. Could you run me through the measures that are currently in place that you are aware of or have oversight of within the ACT to counter misinformation and disinformation?

**Mr Cantwell:** Next to nothing.

**MR WERNER-GIBBINGS:** My next question was: do you think they are enough?

**Mr Cantwell:** No.

**MR WERNER-GIBBINGS:** Are you aware in other jurisdictions of such measures that are being used or could be used within the ACT?

**Mr Cantwell:** I can only refer back to the South Australia example. It is a good one in that they have seen a potential for it to impact their election coming up and they have legislated pretty quickly to counter the impact of at least fake videos, as we call them. They have to be authorised. If I appear in one saying something, then I have to have authorised it. I cannot speak to the specifics of how that authorisation appears on the video or in a text box; I do not know.

**MR WERNER-GIBBINGS:** I imagine if you can AI a whole person talking, you can probably AI an authorisation.

**Mr Cantwell:** Well, that's it. But if you can AI that and the person then says that is not authorised, then perhaps the legislation needs to include that as a potential offence. Again, I do not know the South Australian example that well to talk to it with any authority. I think it is a good example we could learn from. I have another ECANZ meeting in the next quarter. We do these meetings all the time. Ro meets with his deputies all the time. There are bound to be more ideas and initiatives coming up.

But to your first question, the reason we have raised it is because the legislation is right on this. It is a new thing. We need to get ahead of it as best we can, or at least prepare us all for the needs beyond what we try and do in our own information campaign to encourage electors to think carefully and think critically about what they are hearing and seeing and perhaps get engaged in the process of information earlier and not just in the moment before they cast a vote so they can make a better and more considered opinion. I am not saying we are going to get it right, but we have to do more than what we are doing at the moment, I think.

**Mr Spence:** In terms of processes that other electoral commissions have undertaken to combat disinformation, a number of jurisdictions have what they call a disinformation register. It is specifically designed to capture disinformation about the electoral process, so not misleading electoral advertising that is about policy or anything like that. It is about the process of voting. We stood ready to have a similar process at the 2024 election but had no need to engage it in practice as we did not identify any disinformation about the voting process. But my understanding from other jurisdictions is that it has proved to be quite a useful website page to alert people to the misleading nature of some commentary around the voting process.

**Mr Cantwell:** I think those registers as they are called, at least at the AEC level, de-identify the organisation or the person that has made the statement and rather describes what the statement is and then seeks to address the misinformation or disinformation within it. That is made publicly available on the AEC site so people can consider, "If I have seen this commentary, I do not need to know where it has come from but here is the AEC's counterpoint". That hopefully makes for a better informed electorate.

**MR BRADDOCK:** The chair just raised the incident from the federal election campaign where one party basically imitated the style guide of another party.

**Mr Cantwell:** The style guide?

**MR BRADDOCK:** The colour and printing and layout and that sort of thing of another party. Am I correct in understanding there is nothing in our legislation that would prevent that from happening in the ACT context?

**Mr Cantwell:** I would like to check with Ro as to the detail of whether that specific instance might be captured under the current electoral offences. I do not think it is.

**Mr Spence:** It is difficult without seeing and analysing the actual claims, but the misleading electoral advertising is a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent. So whether such a how-to-vote card could be determined to be a statement of fact that is inaccurate and misleading would

be the consideration that would take some time to deliberate over.

**MR WERNER-GIBBINGS:** We are all thinking it, so I will ask it—roadside corflutes. A significant number of submissions presumably of every inquiry since the beginning of ACT time mention the role of roadside corflutes in the election. What has the commission heard about them in the lead-up to and since the 2024 election? There was a restriction in numbers of about 250. Does the commission support any further changes to the use of such signage ahead of the 2028 election based on the information you have received and the assessments you have made?

**Mr Cantwell:** We had a couple of inquiries about it, and the media raised some questions with me about it. My response was that it is not in practice something which is policed by us at all—if I can use the word “policed”—but by Transport Canberra and City Services, specifically the city rangers. Just how they went about the business of enacting that restriction of 250 corflutes I do not know.

**MR WERNER-GIBBINGS:** Nor do they, I think. How could you count?

**Mr Cantwell:** I am not going to criticise anyone in this regard; it is a vexed issue. We have had a couple of individual statements or queries raised to us but, again, we are not responsible for how it is enacted. I could not comment further other than what I have said here. It is the job of the city rangers and it is a challenging one for the specifics.

Do we have a view on it? Not necessarily. We are happy to provide advice, as you might see, but does it impact upon the delivery of the election? Not to a material extent. It is another piece of information that the elector is provided with. The legislation was enacted as we could enact it, and if somebody considers making further changes to it, we are happy to provide advice, as we might be able to. But we do not really have a view on it.

Anecdotally I understand it was a welcome adjustment from where we were previously. There were demonstrably fewer corflutes around. I recall in the 2022 election we had a couple of complaints raised to us about unknown persons interfering with signs that had been placed. I think the likelihood of that occurring if there are fewer signs in the first place is reduced. Other than that really cannot offer a strong view one way or the other. I am happy to provide advice if the Assembly wishes to consider legislating further.

The other thing that might be worth thinking about is if you changed it once for the 2024 election, maybe just see how that plays out as opposed to chasing it by legislative changes every time. But that is not my business; that is your business. But that is a view that I offer in the first instance. Ro, do you have any thoughts about that?

**Mr Spence:** Not really. The proliferation of the signs is really a feature of the Hare-Clark electoral system where candidates within a party are competing against the candidates within their own party and in other parties. It is a unique feature of a proportional representation system like Hare-Clark in the ACT. But, how the Assembly chooses to restrict or otherwise is not something I have a very strong view on.

**MS CARRICK:** My line of questioning is about barriers to entry into the Legislative Assembly. For somebody who is unknown and independent, corflutes are a way of

getting your face and your name out there. Without a party behind you it is very difficult without those mechanisms to let the community know that you are there. So I would support that—

**THE CHAIR:** Is there a question?

**MS CARRICK:** No, I guess I am asking about barriers to entry. Can it be a barrier to entry to the Assembly if an independent candidate is not able to use corflutes?

**Mr Cantwell:** I really cannot answer the question, I am sorry. I am not a politician and I have not been a politician. By statutory authority I cannot be in that space. I could not offer a view as to how that might be a barrier for a politician to enter that space. I acknowledge the basis of your question, but I am sorry, I simply cannot answer it.

**MS CARRICK:** I have a question about the expenditure—it that barrier to entry thing again. The chair's first question was about an amount of money as compared to what you spend. If you are a new entry into the MLA market, you are going to try and minimise your expenses because you might not get in. You do not want to be way out of pocket. If you are in a party you might know you are going to get 10 people in, so you can spend \$50,000 on each so you have \$500,000 to go out and spend. But as a new entrant, you do not have that confidence.

An incumbent MLA has the benefits of incumbency and getting paid. Whereas if you are a new entrant, you are relying on your day job but at some point you have to take leave to be able to campaign. So when you talk about the costs of reimbursement as compared to what somebody has spent, are you taking into account the barriers of a new entrant?

**Mr Cantwell:** Our recommendations do not speak to the matter you have raised about perceived barriers to the political process of a new candidate. Rather, we made a recommendation that the Assembly could consider the aspect of public funding but in the context of how it is evident on the record that some parties and candidates have received more by way of public funding than they have expended. I could not offer an opinion about the context you referred to in your question about barriers to entry. It is just not my space to put a position on that.

**MS CARRICK:** Well, I raise it to suggest that the committee considers it. Now that I am an incumbent I will be a different situation to my first campaign.

My other question is about the Hare-Clark system. A lot of people are very confused about it. I do not understand why because it is quite straightforward to me, having studied the spreadsheets. But a lot of people say that they are confused about Hare-Clark. I think the nexus between five candidates in an electorate and voting 1 to 5 confuses people. Because there are five MLAs to be elected they are noting 1 to 5, a lot of people think they have five votes and that those are the five people. But you are actually electing one person; your vote keeps moving until it hits somebody who is not eliminated. What are your views about breaking that nexus between five candidates and voting 1 to 5? If it said vote 1 to 7 or vote 1 to 10 it would break that nexus.

**Mr Cantwell:** Your question has touched on two issues—the number of MLAs per

electorate and also ballot paper instructions. Am I correct on that?

**MS CARRICK:** Yes, because it confuses people. With voting 1 to 5 and five people get elected, they think they are voting for five people when in fact they actually end up voting for one person.

**Mr Cantwell:** The commission supports you in your view that Hare-Clark is a very good system applicable for the ACT context. With respect to the point about the instructions on the ballot paper, the report speaks to this matter. Rather than just regurgitate it here I invite close readership of that and also the recommendation. By far and away the vast majority of electors follow the instructions on the ballot paper which are specified in the act. We did not make those instructions up; they are in the act. They follow that and they vote as per that—that is, they fill out the boxes numbered from 1 onwards.

But there is also the matter of what are known as saving provisions. The act also provides that if a voter casts their vote by way of number 1, then that is a formal vote and will be admitted. The report recommends a consideration of this. The commission's position is that we believe the current arrangements are appropriate and working well, but also makes a comment that if the Assembly considers changing any of this—which we do not recommend—we need to be very careful about not impacting the savings provisions in a negative sense and also acknowledging that by far and away the vast majority of electors follow the instructions on the paper. I cannot recall the exact percentage, but it is specified in the report. Again, we would be happy to provide further advice to the Assembly if that is something they want to take up in its considerations.

**MS CARRICK:** The implication is, though, that if you vote for a major party, somebody in the major party will be elected so your vote will stop there.

**THE CHAIR:** Ms Carrick, we need to make sure we do not get into debating the issue.

**MS CARRICK:** I am just saying what the issues are; I am not debating. The issues are the vote will stop with a 1 to 5 in a major column because someone in that major party column will be elected.

**THE CHAIR:** Ms Carrick, the point has been—

**MS CARRICK:** No—

**THE CHAIR:** We have a few more questions for members to get to.

**MS CARRICK:** If it is a small party and nobody gets elected, the vote gets exhausted and it does not move on then. If people just go 1 to 5 for a small party and nobody is elected—

**THE CHAIR:** Ms Carrick, could you wind up, please?

**MS CARRICK:** Okay.

**THE CHAIR:** Thank you.

**Mr Spence:** Can I address something quickly? It is not accurate to say that you are only electing one person under the Hare-Clark system. There are scenarios where your vote can travel from an elected candidate to an elected candidate and assist in the election of more than one candidate.

**MR BRADDOCK:** In terms of the ballot paper instructions, we received a number of submissions that suggested increasing that by a small amount due to the number of votes that exhaust because they may have gone down one column and would not have gone further. Why do you not support extending the ballot paper instructions to have, let's say, 6 or 7 without impacting the savings provisions or formality rules to ensure that voters' choices are being recorded?

**Mr Cantwell:** Because we think the current arrangements are appropriate and work well.

**Mr Spence:** Noting the number of submissions that raise ballot paper instructions, I have started an analysis of preferences and the scrutiny sheets to understand the implications of extending the instructions to a different number. There is a logic to 1 to 5 because there are five members being elected. Anything other than that would be an arbitrary choice—7, 10. It would be interesting to understand the impact of doing so, and there is an analysis we undertaking at the moment. The early stages of that are showing that regardless of how many preferences a paper may number under a five-member seat—and I have not done a larger number seat—around 95 per cent do not go further than five. They stick with the elected candidate and the further preferences on the ballot paper have largely not taken effect.

**MS CARRICK:** Yes, because primarily your major parties get in and it sticks with them.

**Mr Spence:** But even if the ballot paper had additional preferences on it, the analysis—and it is early stages—shows that it does not tend to go further than that. It would be interesting to know some other scenarios, and we are working through that and stand ready to provide further advice on that matter.

**MR BRADDOCK:** Once you have completed that analysis could you make that available to the committee?

**Mr Spence:** Sure.

**MS CARRICK:** And can you particularly look at the small parties? So if they go down a Greens column but a Green is not elected, then it stops, it is exhausted. Or if they go down Mr Emerson's party from 1 to 5 and no-one is elected, it does not move on anywhere.

**THE CHAIR:** We will take that as a comment. I would like to turn to polling places. Polling day polling places were reduced at the last election. Have you undertaken any analysis as to whether that had an impact on turnout, because turnout was certainly not as good as it has been in previous years.

**Mr Cantwell:** No. In this instance the link between voter turnout and the number of polling places is not clear. But the reasons for the selection of polling places in the first instance were based upon a close analysis of 2020 and earlier elections to determine where voters go to vote, when they vote and across what hours. Notwithstanding the COVID impact of the 2020 election and everyone's effort to be as COVID-safe as possible and the commission's effort resourced, appropriately, by the Assembly to maximise the opportunity for people to attend early voting or attend a voting place on the day in a risk-free environment, we could not sustain those numbers and those hours in a less COVID-risk environment such as the 2024 election.

I looked very carefully at the data that the team worked through to ensure that we applied what resources we have to be the most efficient and appropriate expenditure of public resources to deliver the quality of services that we needed to provide. The outcome was that we were far more efficient in the use of those resources. Ro will indicate a good turnout is around 2,000 voters at a polling location, which warrants the effort and expense in delivering or establishing that location.

By the way, they are increasingly hard to find at a reasonable cost to the commission and, indeed, to the territory. A lot of venues are unaffordable or the demands placed upon us are beyond what we could sustain. We are not alone in this regard; every jurisdiction across Australia is having to find polling locations that are increasingly more expensive, less readily available and do not meet the requirements.

We are closely advised by the Accessibility Advisory Committee to ensure that we include all considerations of those who require particular accessibility considerations to be applied in all manner of forms so that as many as possible of our electors can attend a polling location. As you know, we also introduced the Low Sensory Voting Centre with great success.

So we analyse every election very carefully and, of course, the location, the opening hours, the staffing, the number of polling places, the number of polling booths within each of those places continues to be looked at very closely to ensure we provide the best and most appropriate service for all members of our society when they go to vote.

**Mr Spence:** The analysis is undertaken. We aim for a median of about 2,000 per polling place. The outcome of the actual election was 2,008, so we pretty much nailed it. There are areas that we can continue to improve. Our analysis and lessons-learned review has indicated that some of those polling places could have had an extra issuing point to assist voter flow through the polling place to a greater extent.

**Mr Cantwell:** And how do we communicate that information? . Again, we are often not able to get confirmation of the availability of a particular polling place until quite late. We have worked very hard to try to get some of those locations, and sometimes we just cannot get it locked down to include it in some of the information. We need to get their household brochures, which are always very welcome, as a last means by which people refer to on the day and try and make that as accurate as possible.

**THE CHAIR:** The other question I wanted to ask is about the exclusion zones around polling places. Putting aside the difference in size of the exclusion zone with a federal election, there seems to be a different way of measuring what that zone is. The federal

elections seem to measure it from the entrance to the polling place whereas the ACT seem to measure it from the entire building.

**Mr Cantwell:** The premise.

**Mr Spence:** There is a good reason for that though, because 6 metres from the entire building does not make a great deal of sense; it does not change anything in particular. But 100 metres from the building when it is a broader boundary does change things, particularly in terms of signage and those elements.

**THE CHAIR:** And this is the question. If you take the size of the building, for example, at the Tuggeranong pre-poll compared with the size of the building at the Woden pre-poll, in Woden those handing out information were so far excluded that people looking for information on the candidates and what to do with their vote had to go a very long way to find anyone. That was because of measuring things from the building, which was three buildings taken as a single building. Is that an interpretation or a legislative requirement?

**Mr Cantwell:** It is 100 metres from the building in which the voting is taking place. I accept there can be instances as you described where the buildings are connected together. That have 100 metres at some distance from the actual location as opposed to the building in which it is being conducted.

**THE CHAIR:** In Woden it was roughly 250 metres, for example.

**Mr Spence:** It is in the act. It is legislative.

**Mr Cantwell:** Yes, we will enact whatever is in legislation. Do I have a view on it? The benefit of it is increasingly evident, not so much here, but in other jurisdictions that have reported increasing levels of harassment or intimidation or even violence in and around polling locations. We need to be conscious of those growing risks in broader aspects of society. Thankfully they are not yet evident here in the ACT and I hope never the case.

**THE CHAIR:** Would that not just move the problem slightly further away?

**Mr Cantwell:** It could, but the point I am making is that if that occurs in addition to putting people's safety at risk we are also trying to avoid disruption to the polling activities in that location. The 100-metre rule is proving in my view to be a very worthy piece of legislation. Of course, if the Assembly wishes to legislate or consider otherwise, we are happy to provide our advice and we will enact whatever is ultimately legislated for.

**MR BRADDOCK:** Your report recommends the consideration of the reintroduction of donation caps. Can I confirm your understanding that donation caps are compatible with the Australian constitution's implied freedom of political speech and communication?

**Mr Cantwell:** Again, without wanting to lean into a detailed discussion that we can contribute to having sought the appropriate level of advice if I need to in a legal sense, we have made this recommendation in the context of continuing to ensure that we have

a fair, transparent and open political system and process, that people are aware of the accuracy of information they are receiving, that they are seeing what the political process is about, and we are seeing where sources of funding and so forth appear from.

Again, we just made a recommendation that it is something that the Assembly might wish to consider and we would provide advice. I cannot give a specific answer to your question. I would be reluctant to do so other than to say for any specifics you might want to generate in an Assembly discussion formally or informally we would be happy to provide advice as best we can.

**MR BRADDOCK:** Would it be possible for the ACT to adopt the South Australian style of reform which bans all political donations?

**Mr Cantwell:** Yes, it is an approach. I have yet to have the discussion with the commissioner in South Australia—I will do so following their March election—about how he thinks that impacts that context otherwise. But is it possible? Yes, we will enact whatever the Assembly legislates. Is it applicable to us? Again, we would like to take that under consideration for further input should those questions arise with a bit more specifics.

**MR WERNER-GIBBINGS:** What is next for e-voting?

**Mr Cantwell:** It never stops, electronic voting—eVACS.

**MR WERNER-GIBBINGS:** The system as it was set up in 2024, are the changes, improvements, strengthenings, expansions for 2028?

**Mr Cantwell:** Yes. The environment in which it sits with the degree of risk in terms of cyber integrity never stops. By design it is a secure system—it is not connected to the internet, it is a closed LAN in each location where it is fielded, and there is a raft of integrity assurance measures taken before and during the election to give the very best assurance possible that it is a secure, trustworthy system. But we are never going to rest on our laurels.

That is a great question. We will continue to modernise and strengthen and test the system. We will shortly through the Assembly budgetary process develop and present a budget business case that seeks to continue to modernise the system and the other ICT-enabled systems accordingly to address the continuation of those threats as we see them. We are advised, both by our ACT ICT cyber experts and also the federal agencies as to what those threats might be as they might impact electronic voting and counting.

In the 2024 election there were a number of new initiatives which further sought to assure integrity, for example, of ballot paper scanning. We had a live audit of the ballot paper scanning as it was underway in the week following the close of the polls and the counting of the paper ballots to ensure that the recording of those paper ballots as they were cast was correct and that there were no errors. Again, we always take positive, constructive advice from a range of academics and other ICT experts to see how we can potentially improve eVACS and the other related systems.

We are happy to continue to recommend eVACS. It is a proven system. We believe it

to be demonstrably secure and trusted. We welcome constructive advice and even criticism about it, all in the interests of ensuring that it continues to be the trusted system going forward. It works for the ACT. It is not to say it is the only system—paper ballots remain a voting choice for some, and that is fine. We will always receive that as well.

**THE CHAIR:** On behalf of the committee I thank you for your attendance today. I thank our witnesses who have assisted the committee through their experience and knowledge. This meeting is now adjourned.

**The committee adjourned at 4.01 pm**