



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**SELECT COMMITTEE ON AMENDMENTS TO THE ELECTORAL ACT 1992**

(Reference: [Amendments to the Electoral Act 1992](#))

**Members:**

**MR M GENTLEMAN (Chair)**

**MR A COE (Deputy Chair)**

**MR S RATTENBURY**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**FRIDAY, 9 MAY 2014**

**Secretary to the committee:**

**Ms L Gell (Ph: 620 50435)**

**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**

**CORNWELL, MR GREG AM**, private citizen ..... **18**  
**GREEN, MR PHILLIP**, ACT Electoral Commissioner, ACT Electoral  
Commission ..... **1**  
**WARHURST, EMERITUS PROFESSOR JOHN**, private capacity ..... **25**

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*Amended 20 May 2013*

**The committee met at 3 pm.**

**GREEN, MR PHILLIP**, ACT Electoral Commissioner, ACT Electoral Commission

**THE CHAIR:** Good afternoon, everybody, and welcome to this first public hearing of the Select Committee on Amendments to the Electoral Act 1992. The select committee was established on 20 March this year to inquire into the proposed expansion of the size of the Legislative Assembly, the implications for the ACT of the High Court's recent decision in *Unions New South Wales v State of New South Wales* and Election ACT's report from the 2012 ACT election and related issues as set out in the terms of reference.

The committee has released a discussion paper that addresses many of these issues and has received and published nine submissions to date. The committee has extended the closing date for submissions to 12 May, and its report is due by the last day of June this year.

On behalf of the committee I would like to welcome the ACT Electoral Commissioner, Mr Phil Green. Can I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement before you on the table. Could you confirm for the record that you have read and understand the implications of the statement?

**Mr Green:** Thank you. Thank you for your invitation to appear. Yes, I have read the statement.

**THE CHAIR:** Thank you. Can I remind witnesses that proceedings are being recorded by Hansard for transcription purposes and webstreamed and broadcast live. Would you like to make an opening statement?

**Mr Green:** Thank you, Mr Chairman. Probably the best use of my time would be to take questions from the committee. There are a few brief things I would like to draw your attention to in our submission, perhaps to just highlight a few things. But I will be very brief, because I think a more valuable use of my time might be to take questions.

There are three things that I thought I would highlight upfront. One is the constitutional issues that arise from the High Court case in New South Wales. It is pretty obvious that the ACT's prohibition on receipt of donations from persons who are not ACT electors would appear to be unconstitutional, looking at the logic of what the court has said in New South Wales. The question of whether including associated entities and other related entities in the expenditure cap in terms of the ACT law, I do not think, is as clear cut as the case that was made in New South Wales in relation to the trade unions. I think there is quite a lot of doubt as to whether that is an aspect of our Electoral Act that is a constitutional concern or not.

As you will appreciate, the members of the ACT Electoral Commission are not lawyers. We are certainly not constitutional lawyers. The views we have expressed in our submission are our own non-lawyer views. So you may wish, as a committee, to

take your own legal advice on those issues. That is really the context in which we have made our views known.

One thing that we are concerned about is that if, for example, associated entities are not taken to be part of the party grouping when looking at the expenditure cap—because there is a very close relationship in the ACT between the associated entities that currently exist and the political parties that effectively form those associated entities—and you were to separate those entities out and give them each their own expenditure cap, then I suspect that might be a way for various groups to get around the expenditure cap and that might open up a loophole in the act where people may wish to go out and create more associated entities just to get around the cap on expenditure. So I think that is an issue that needs to be looked at.

In terms of the penalty for failure to vote, the commission has not expressed a value at which it thinks the penalty should be increased to. I am happy to speculate about that if you would like me to do that, but I am not sure that we are in any better place or are better equipped to inform the committee on that than the committee might be to think about that in its own right.

I did notice in the submission put forward by Mr Corbell that he is referring to the commissioner's concern regarding administrative costs associated with the fine. They are not our concerns. We have not expressed our concerns in that context. Our concern is with the deterrent impact of a \$20 fine on the turnout of electors at ACT elections. It does appear to us that the \$20 penalty is not as strong a deterrent as it might have been in 1983 when that penalty was first set. So our concern is front and centre with the deterrent value of that penalty.

The other issue that I wanted to briefly draw your attention to was the impact of increasing the size of the Assembly to 25 members on the value of the expenditure cap and the value of the administrative funding provided to political parties. We did put some figures in our report where we are, for example, pointing out that if you increase the size of the Assembly without changing the relative amounts that are provided per candidate for calculating the expenditure cap or per MLA in terms of calculating the total administrative funding pool paid to parties, there is quite a significant increase in those two amounts if you increase the size of the Assembly. That is not a thing that has been discussed, that I am aware of, publicly as an impact of increasing the size of the Assembly. I do not think the government addressed that in their submission. But I think particularly increasing the expenditure cap from just over \$1 million to just over \$1.5 million is quite a significant increase and I think that is something that the Assembly should be aware of when they are looking at increasing the size of the Assembly.

Those are the only things that I thought were worth highlighting, but I am very happy to take questions on anything.

**THE CHAIR:** Thank you. I might just add another topic for discussion. I am not sure if you put this in your submission. It is in relation to the recommendation for a further increase at the election post 2016, so 2020, to a larger Assembly. Do you have any views on the preparations for that?

**Mr Green:** That is something that the expert reference group that I chaired looked at in some detail. We were concerned that it has been so difficult to get to the point of getting an agreement on increasing the Assembly to 25 from 17, which we thought was manifestly much too small. We were concerned that, if the opportunity to increase the Assembly at this time was only to lock in a particular figure and not to look to the future, it might be a waste, perhaps, of an opportunity to look to the future and say, “At an appropriate point in time it might be appropriate to move to a larger Assembly.”

If that happens, at this point that might be one debate that happens once, whereas if you leave it to the future, then that is a debate that is going to happen again in the future. Again, obviously it is always a difficult issue as to questions of increasing the sizes of parliament.

One of the factors that we used to look at increasing the Assembly to 35 at a future election was our concern that five-member electorates are not as representative as seven-member electorates and that, if you were to be looking at the situation in an ideal world and perhaps starting from scratch without any of the history that we had, it might be appropriate to establish the Assembly with seven-member electorates. With the size of the population as it is now, a 35-member Assembly, if you look at parliaments around the world, would not be a very large Assembly when you look at our population scale compared to other places around the world.

If you were to move to seven-member electorates at some point in the future and a 35-member Assembly, that would give you an Assembly that would probably be an appropriate size to go for quite some distance into the future. Seven-member electorates are more proportional than five-member electorates. In my view in particular, setting aside my role as a member of the expert reference group, as a Hare-Clark aficionado I would like to see seven-member electorates simply for the fact that it is more proportional. But clearly, those are difficult things to make decisions on at this point in time.

**THE CHAIR:** Members.

**MR COE:** I am curious to pursue the issues regarding constitutionality of our laws and whether you think, in light of the New South Wales decision, there is scope to get a similar outcome but through constitutional means.

**Mr Green:** I am not sure what the question is there.

**MR COE:** What other options are there that might still either restrict spending or restrict contributions to parties or to associated entities and, therefore, get to a similar end point?

**Mr Green:** I think one of the positive outcomes of the court case has been to confirm that it is, within the view of the court, appropriate to have some caps on expenditure and caps on donations. They did not make an outright prohibition on caps on expenditure or donations. I cannot remember the words they used, but they are looking for proportionality of the restrictions and the purpose of the restrictions being aimed at minimising possibilities of corruption and undue influence and so forth. My

understanding of the court decision is that they have ruled that caps on donations and expenditure, provided they are proportionate, are appropriate and there is no reason why they cannot continue. So the fact that we have both caps on expenditure and donations in our act appears to be constitutionally okay.

I think all that matters now or all that is relevant in terms of the High Court decision is to be sure that those fairly minor provisions that we have, that are almost certainly unconstitutional, need to be fixed, but they are going towards the question of banning donations from people who are not ACT electors, which is one clause in the act that simply could be removed without really changing anything else in the scheme. And the other question is to look at whether it is appropriate to be including associated entities and other bodies within the total expenditure cap provisions related to party groupings and non-party candidate groupings.

**MR COE:** Mike Baird came out publicly a couple of weeks ago or thereabouts that there should be a discussion on 100 per cent public funding of campaigns. What are your thoughts on that?

**Mr Green:** That would be a very radical change to the way elections have been held in Australia. I would imagine, unless you are going to be severely limiting the total amount of expenditure, it is going to be quite an impost on the public purse. But I think what you have got to be really cautious of if you are talking about 100 per cent public funding is not skewing your electoral process so that it unduly benefits people who are currently sitting members of parliaments and currently have parliamentary parties with members sitting in them. If you are going to be providing funding to parties with members in it at a greater level than parties that do not have sitting members in it, then arguably that is inherently unfair.

So I would be pretty cautious about doing that, and I would be surprised if you could come up with a model that would be fair to all parties and non-party candidates and anyone who wants to stand for election.

**MR COE:** Have you done any research about jurisdictions elsewhere in the world that do have that kind of model in place?

**Mr Green:** No, I have not systematically looked at that. I am not aware of any. But I have not researched that.

**MR RATTENBURY:** Just in that vein on the expenditure caps, you have talked about what would be a substantial increase if the current model were retained. Do you have a view on what an appropriate expenditure cap might be? The other option seems to be that we keep the current cap or something like it and simply divide that by the increased number of candidates. If I recall correctly, your submission refers to the impact that might have on independent or minor party candidates.

**Mr Green:** There are a few issues in there. One is the way in which we arrived at the current cap—"we", the Assembly and those people who worked on the bill that went to the Assembly—of just over \$1 million. My recollection of the discussion that went into that was that it was aimed at putting in place a cap that was roughly around the expenditure that was currently occurring. I think at the election before the cap was put

in place the Labor Party spent about \$1 million on the election campaign. I think it was the biggest spender. The Liberal Party I think was some way behind it but not too far behind it. So I think the logic of arriving at about \$1 million for the total cap was to leave expenditure in the ballpark where it currently was without restricting what had gone on before but also without opening up the floodgates to allow people to spend significantly more than they had been spending in the past.

I suppose that is as good a way as any of coming up with an amount. I think that was the logic behind that. If we leave the way in which that cap is currently calculated unchanged, then there would be an increase in the cap from just over \$1 million to just over \$1.5 million. That is actually significantly increasing the amount of money that could be spent on a campaign. So I think there is an issue there that if the cap is going to be set at such a high level that no-one is actually likely to get to the cap without getting largely increased sources of funds, then the cap is probably not worth having if you are not going to have a cap that is actually going to prevent people spending lots of money. So if what you are looking for with a cap is a level playing field, then I think the lower the cap the better, if that is the aim of having a cap.

However, if you reduce the cap per candidate to achieve that, then arguably you are disadvantaging the independent candidates whose cap will go from whatever it is now to whatever that reduced amount would be. So arguably it is unfair to independent candidates to do that to them.

I have not looked at this in any detail, but what you might be able to do is leave the per candidate cap at the current level but have a top floor on that so that no one party can spend more than 17 candidates' worth of expenditure. That might be one way of doing that. But then there has been much talk in Senate elections about gaming the system. What you do not want to do is come up with a method that can be gamed by people getting together and perhaps running 25 candidates that do not all belong to the same political party but might all have the same views and thereby get an expenditure cap of 25 times the amount per candidate. So it is not a straightforward thing.

The other issue is the cap on third-party campaigners, which is currently tied to the amount per candidate. Again, if you reduce the amount per candidate without changing the amount per third-party campaigner, that would reduce that as well. I do note that at the 2012 election we had two third-party campaigners who were not aware of the caps and who very quickly spent over the capped amount just on a fairly small series of advertisements in the *Canberra Times*. Maybe there is an argument for increasing the cap for third-party campaigners. I think putting a fairly small cap on third-party campaigners was not contested in the recent High Court case, but that might be something that could be argued as being restrictive of free speech, if you are putting a fairly tight cap on third-party campaigners in terms of what they can spend on an election campaign.

So an answer to that issue, if, indeed, it is an issue, might be: if you are going to reduce the cap per candidate, you might increase the cap for third-party campaigners to perhaps twice the amount of the cap for a candidate so that you actually put it up slightly rather than reduce it. They are thought bubbles, no more. I do not really have answers to those questions.



**MR RATTENBURY:** I am not sure there is a clear one at this point. Colleagues, I was going to start a new line of questioning.

**THE CHAIR:** Yes.

**MR RATTENBURY:** I wanted to ask about electoral boundaries. One of the issues that I think has consistently come up in the last four or five years, especially from the community councils, has been about the communities of interest—where we draw the boundaries, what are the right numbers: all of those issues. This seems to be largely governed by section 36 of the Electoral Act which talks about factors relevant to redistribution. Those factors in there—where did they come from? Did they come from federal law originally?

**Mr Green:** Our redistribution laws are almost entirely a straight lift from the federal redistribution laws.

**MR RATTENBURY:** Do you think those characteristics are going to allow for the desires the community has expressed very clearly or do you think there is scope to adjust those characteristics in some way?

**Mr Green:** This is something I feel fairly strongly about.

**MR RATTENBURY:** I am glad I asked then.

**Mr Green:** I am afraid I do not agree with some of the views that have been put forward by some of the community councils. If you look at the history of redistributions in Australia, there used to be a time when there was considerable latitude built into electoral boundary processes for giving weight to different kinds of communities. For example, there used to be a requirement in the Commonwealth Electoral Act for, if I remember correctly, variances in boundaries up to plus or minus 20 per cent but with a requirement that rural districts would be on the bottom end of the 20 per cent, so they would have very small populations in them to compensate for the fact that they were rural and remote and so forth. But that concentrates voting power disproportionately depending on how large your electorates are. If you have got a small electorate—a small electorate in terms of population—you have got more voting power than someone who is in an electorate with a large voting population in it.

The history of reform of the redistribution process in Australia that occurred in the 1980s was all about getting the one vote, one value principle as the most important principle of the redistribution process, combined with taking the redistribution process out of the power of parliaments and ministers and giving it to independent electoral commissions. Those things were achieved in the 1980s.

The significance of this was recognised in the self-government act. The self-government act includes in it a provision that requires us, when we are doing a redistribution, to have no more than a 10 per cent plus or minus variance in our boundaries at the point in time when we draw our boundaries. It is actually recognised in the self-government act that that one vote, one value principle is something that is highly desirable.

If you look at the redistribution process anywhere other than in the ACT, it is extremely common, particularly in the larger metropolitan areas, to split suburbs; it is very common to split suburbs. It is very common to split what we call districts—Woden, Belconnen, Tuggeranong and so forth—simply because the urban sprawl in the larger cities is such that to get the numbers to add up to the one vote, one value principle you have essentially got to draw boundaries that split ideal communities.

Applying those rules to the geography of the ACT, because we have got discrete town centres and discrete districts, particularly with very well established green spaces between them, you can point to our boundaries and say, “Well, it’s really odd that Brindabella has four suburbs of Woden in it and it’s really odd that Ginninderra has a couple of suburbs from Gungahlin in it.” You can see from the green spaces that there is not the community of interest that you might expect if it was just one big urban sprawl and everything was contiguous with everything else.

However, if you try to draw electoral boundaries so that you are not splitting district boundaries, you are going to almost inevitably infringe on the one vote, one value principle. I think that is more important than keeping districts together which happen to be accidents of geography.

As to the suggestion of having different sized electorates based on the population of the districts and changing the number of members according to a formula so that you get in some electorates two members and in other electorates six members and other electorates three and other electorates five, I do not find that at all attractive. What you are doing is putting a different quota for election in the different districts, depending on how many members are to be elected. If you have an electorate that has only two people in it, it is almost inevitable that you will get a Labor member and a Liberal member elected every time, simply because of the way people in the ACT vote.

It is a principle in the Proportional Representation (Hare-Clark) Entrenchment Act that each electorate should have an odd number of members and that the smallest electorate should have five members in it. The reason those principles are enshrined in the entrenchment act are to do with the mathematics of Hare-Clark and the notion of what is a fair outcome and what is a proportional outcome using the Hare-Clark system. The argument was put forward in proposing that those things be entrenched that an electorate smaller than five is not proportional enough to give effect to the proportional elements of the Hare-Clark system.

It is also important with the Hare-Clark system for an electorate to have an odd number of members in it because that ensures that a party that gets more than half of the votes will get more than half of the seats. If you have an even number of members elected in an electorate, you cannot guarantee that more than half the votes will give you more than half the seats, which is inherently unfair. I think there are a variety of different reasons why, unfortunate as it may be, it is more important to provide for one vote, one value and for electorates of at least five members than it is to give a higher priority to the boundaries of the various divisions around Canberra districts.

**MR COE:** I might follow up on that. This might seem a little bit obscure, but is the target you are looking for to actually get zero per cent variation? Or is plus or minus

10 per cent, that whole band, actually the target? The reason I ask this is that under my research of five-fives, for instance, Gungahlin in and of itself is not enough. It is not a fifth of Canberra so some extra suburbs will have to go into that electorate as well. Let us just say they are coming from Belconnen. If you want to get to zero per cent then you may well take five or six suburbs out of Belconnen. However, they would only be added to the Gungahlin electorate just to be taken away, presumably, at a later point in time. Therefore, would being minus 10 per cent be optimal, or would you actually take suburbs out of another electorate to try and get to zero per cent?

**Mr Green:** That is a good question. There are actually two different tolerances that we need to meet when we do the redistribution. The self-government act provides that each electorate has to be within plus or minus 10 per cent of the average at the time when the redistribution is actually made. The Electoral Act provides that each electorate should be within five per cent, plus or minus five per cent, of the quota at the time of the next election, which is actually a harder test to meet. That can only be done on a projection. So the first thing that we do in getting ready for the redistribution process is to estimate, using ABS data, what we think the enrolment will be at the time of the next election. So we would be looking at October 2016. What we are trying to meet is a five per cent variation at the time of the next election.

I have been doing this job for nearly 20 years now, so I have done quite a number of redistributions. I have had two different chairpersons who have chaired the augmented Electoral Commission. We have had differing views on whether the ideal was to reach a zero balance or to work within the plus or minus five per cent. My purist one vote, one value hat has made me try and aim for zero tolerance, but I have had other chairpersons who say, "Well, if you don't need to move something and you're still within the plus or minus five per cent then don't move it." That has actually been the view that has prevailed.

It has been the case that there was one proposed redistribution where we proposed to move a suburb to get closer to a zero tolerance and then after the objection phase we changed it back again so that the variation was closer to four or five per cent than to zero. I lost out in the augmented commission when we were discussing this, essentially.

**MR COE:** If you do not mind me asking a supplementary on that. Would that be so even if there are already other suburbs in that district which are getting cut out? I can understand a real reluctance to bite into another district or another electorate for the first time. However, if you are already biting into that electorate to the tune of three or four or five suburbs, does that argument really stack up if it is suburb No 6 as opposed to suburb No 1?

**Mr Green:** There are a range of things that have to be taken into account when we are drawing boundaries. The plus or minus five per cent is paramount in the sense that we must meet that. Plus or minus 10 per cent is paramount in that we must meet that. There are the other criteria to do with communities of interest in particular, but there is also a requirement to keep suburbs together. There is not a requirement in the Electoral Act to keep districts together. It was deliberately done that way because it was recognised that it would be very difficult to keep districts together all the time.

If you are faced with a situation where you have a range of options as to what you group with what, the logic of giving effect to the community of interest criteria would be to try and keep as many common communities of interest together as possible. If you had a choice between, say, all of Gungahlin and two or three suburbs of Belconnen and all of Gungahlin and maybe a big chunk of six suburbs in Belconnen, there might be an argument in favour of six as a bigger community of interest to keep together with Gungahlin than two or three. I do not know what the actual numbers are; I am just making this up.

**MR COE:** Sure.

**Mr Green:** Really, that is something that the augmented commission would be guided on by people making submissions to the inquiry as to how they saw that best fits the criteria. Obviously I am just one person of six on the augmented Electoral Commission, so my views will not necessarily prevail in this. This is me speculating.

If you want to have an eye to the redistribution after the next one so that you are actually looking ahead in terms of growth, you would have to write that into the Electoral Act as another criterion to be taken account of. If you were to do that, it would make the job much more difficult because you would not only be projecting what you thought the enrolment was in 2016 but also looking to 2020 when projections would be much less reliable. I am not suggesting you do that, but that is something you might want to think about.

**THE CHAIR:** Do you want to continue along this theme?

**MR COE:** Yes. It is similar but different: electorate names. If the Assembly does change in size and you do get more electorates—however many that might be—I would see there would be pros and cons of keeping the three electorate names in amongst the others. Potentially, however, it would create a perception that anybody that went to a different electorate other than in name was abandoning that electorate—the flipside, even if they were still representing the same area or part of the same area. I was just wondering what you think the pros and cons are with regard to hanging on to the three electorate names we have at present.

**Mr Green:** The question of what the names will be is entirely a matter for the augmented Electoral Commission. It is entirely within the responsibility of the augmented commission to determine what the names are under the act as it is currently phrased. I would suggest that that is appropriate and that that should not be changed.

One of the reasons that power was given to electoral commissions is based on some history where some electorate names in other jurisdictions were changed at the behest of members of parliament for various reasons, and there was quite a controversy over at least one case where that occurred. It is lost in the mist of time in my memory now and I cannot remember exactly what the circumstances of that were. That is one of the reasons—in fact, it is a key reason—why the power to name electorates is given to the augmented commission. It is not something that the Assembly has any control over.

One of the criteria in the Electoral Act is that regard has to be given to existing

electorate boundaries. You could argue that that would extend to existing names of electorates. That would be a factor that would have to be taken into account by the committee. It is tricky, because we will have some fairly radical changes if we are moving from three electorates to five electorates. You will have quite a lot of movement from the current boundaries to the new boundaries and you might find that lining up the existing electorates with the new electorates might be quite tricky. But, really, that is going to be a matter for the augmented commission. Obviously it will take advice from people making submissions to the inquiry about how they think that should go.

**MR COE:** Thank you.

**Mr Green:** I am not sure I have answered the question.

**THE CHAIR:** I think it is virtually impossible.

**MR COE:** That is right. But I think it is important that the issue is considered as one with some consequence rather than being somewhat incidental, if I can put it that way.

**Mr Green:** I think it is going to be a key element of the redistribution, because obviously it is going to have longevity. Whatever names are chosen will probably keep going for quite a long time.

**MR COE:** Yes, and there is also the immediate impact.

**Mr Green:** An issue that you might like to think about is this. I have worked on redistributions not only in the ACT but in federal distributions as well. An issue that has arisen from time to time is that it is not necessarily desirable to link electorate names to geographic names. Consciously the three electorate names that we currently have were chosen at a time when there was not a geographic place called Brindabella, Ginninderra or Molonglo. Since that decision, we have now got the Molonglo Valley district established, which has kind of stolen the name “Molonglo” from the electorate and given it to a physical area. One thing that redistribution committees have tried to avoid is naming an electorate after a place because as boundaries change over time it is possible that the place that they are named after originally is no longer within the electorate, which gets terribly confusing for people. There might be an argument for no longer using Molonglo simply because Molonglo is now tied to a district. Obviously I am not saying what decision will be reached on that, but I think that is an issue that we need to consider.

**MR COE:** Likewise, I would say that Ginninderra Creek, of course, flows from Gungahlin pond through Giralang, Kaleen, Evatt, Mackellar et cetera. I think there is a fair likelihood that those suburbs may well go into another electorate. There is potentially a similar problem there.

**Mr Green:** Indeed. One option is to create different names and not use any of the existing names.

**MR COE:** That is right. That was certainly something that I was flagging for consideration.

**Mr Green:** Another relevant issue is that there was a conscious decision made back in 1992, when the first boundaries were set, to use Aboriginal names for the electorates. Whether that tradition continues is another question to think about.

**MR COE:** Thank you.

**THE CHAIR:** I want to go to the pre-poll arrangements and the increase in electors going to pre-poll rather than voting on the day, the issue of controlling of campaigning and the resources that the territory needs to control campaigning on election day and any comments you might have about other jurisdictions that actually ban campaigning on election day.

**Mr Green:** Pre-polling right across Australia is becoming more and more popular with people. Every jurisdiction has seen an increase in the number of people pre-polling, in quite large numbers. The South Australian election, the Western Australian election, the federal election in the last year or so have all seen increases in the numbers of people pre-polling. I think partly it is because we make it easy for people to do it. It is more convenient.

I think also there is a greater tendency among people to not think of Saturday as a day of rest where they can get up, have breakfast and not have much else to do but to wander down to the polling place during the day. I do not think those days, if ever they existed, exist now. There are so many other things to do on a Saturday that people are finding it much more convenient to vote early, in larger numbers than ever before.

To try to resist that trend, I think, would be very difficult. From my point of view, because we provide electronic voting facilities at our pre-poll centres but not our other polling day facilities, it is a way of increasing the number of people who use electronic voting, and there are lots of advantages to doing that.

It does have impacts on the political process, because a lot of people vote much earlier than polling day. So if a party is trying to maximise its message and perhaps not launch its election campaign until part way through the pre-poll period, a lot of people have already voted before those messages come out. So there is always the campaigning issue in there for the party. But I think it is a trend that is virtually impossible to hold back.

Another possibility, particularly if you were wanting to maximise the number of electronic votes—this is something we have raised in earlier election reports—is: do not have polling day. Have a three-week polling period and have a voting centre in every shopping centre across the territory for three weeks. That is probably cheaper than having polling day with 80 polling places, and you could provide electronic voting to every voter. That is another way you could think about that if you give in to this flood tide of people voting early. So there are a few thought bubbles for you.

**MR RATTENBURY:** Just on that, do you think there would be a drop in turnout? I wonder whether there is something about voting day providing a focus to people, whereas if they had to do it over a week, would they forget, do you think, or lose track

of it?

**Mr Green:** Turnout is a whole other question. I think having an absolute deadline will mean that an awful lot of people will vote at the very last minute, because a lot of people do things that way. You have only got to look at electoral roll closes for that to be obvious. So I think if you did have a three-week voting period you would still have lots of people voting on the last day and you would have to be able to cater for that.

I think the turnout issues in the ACT are more to do with how people perceive the importance of voting for the ACT Assembly. If you look at voting at the last federal election, over 95, 96 per cent of people in the ACT voted at the federal election, whereas we had just under 90 per cent of people vote in the ACT election. Part of that is people who are overseas or interstate have greater opportunities for voting in federal elections and they are more aware that there is an election happening. But I think the turnout issue in the ACT has a lot to do with people's perceptions of the ACT Assembly.

There was another aspect to your question, which I have forgotten, Chair.

**THE CHAIR:** It was the actual campaigning or soliciting votes on the day itself where other jurisdictions, such as Tasmania, for example, have a ban on it during the day.

**Mr Green:** In the ACT we have got a 100-metre ban on campaigning. That means that, if you want to, you can hand out how-to-vote cards or political literature or campaign outside the 100-metre limit. In Tasmania, they ban campaigning altogether on election day. But they do not ban putting up signs before midnight on the eve of polling day and leaving it up there during polling day. So there is this scramble to put up posters and things. They still have to be outside the 100 metres, but you can still have signs and things up all over Tasmania from midnight on election eve onwards. So it is kind of partly a total ban but partly not. It is a little problematic also.

But the intention of the 100-metre ban originally both in the ACT and Tasmania is to combine Robson rotation effectively with a ban on how-to-vote cards by therefore giving a lot of power to voters to be able to choose the candidates they want to vote for in the order of their own choice without being influenced by party how-to-vote cards. If parties hand out how-to-vote cards at the 100-metre limit, then one of the intents of having a 100-metre ban is not really being very effective.

At various times we have suggested in our reports on the various elections over the years that the Assembly think long and hard about why we have got a 100-metre ban and whether they really want the 100-metre ban or whether they want to hand out how-to-vote cards. I think if you want to hand out how-to-vote cards and you have got to stand at the 100-metre limit, that is not really achieving the objectives of the 100-metre rule and you might do away with it and go back to the six-metre limit that the commonwealth has.

I do not feel particularly strongly about either way, other than to point out that if you do allow how-to-vote cards up to six metres outside a polling place for an ACT election, because you have got Robson rotation it is very likely that you will be

confusing people if you are recommending a particular order of preferences for candidates. Whatever order of candidates you have got on your how-to-vote card, it is almost certainly going to be different to the order of preferences on the ballot paper in front of the voter. So it is a very confusing thing, which is one of the reasons why you do not do it.

**MR RATTENBURY:** In a similar vein, people have canvassed the idea at various times of perhaps keeping the 100-metre rule or making it a bit further so that you do get that effective ban outside—in some of our polling places, 100 metres is a bit unclear; it is on the boundary of the school or whatever—but then making available information in the polling place in some way so that those voters who do want to access it can but those who do not just go in and do their thing. Do you have a view on how that could or would work practically?

**Mr Green:** If you had a limit bigger than 100 metres, you are starting to get quite complicated because then you are starting to have that 100-metre limit across things like shopping centres. Often you will find a school might be about 100 metres away from a shopping centre, but almost certainly there will be a shopping centre within 200 or 300 metres of a polling place. So that then raises issues about whether people could be in the shopping centre handing out how-to-vote cards or whether a shop can have a poster in its window or something. It gets quite difficult to implement the ban on canvassing if you are going to extend it out that much further.

I have always resisted the notion of putting how-to-vote cards inside polling places, for the same reason that having a how-to-vote card in a different order to the Robson rotation ballot paper is going to be confusing to people. In all my years of looking at ballot papers, I have not discerned a great level of confusion, people not knowing what they are doing when they are using Robson rotation. It is very obvious that most people are deliberately choosing candidates in their preferred order. You can see that in the way that sitting members are usually preferred before people who might not be as well known. There is a proportion of people who go 1, 2, 3, 4, 5, 6, 7, straight down the column, because they are indifferent to the candidates or they do not know about the candidates or they know they want to vote for the party but they are not that concerned about which candidates they vote for.

The Robson rotation method we have got now, where we have got 60 different variations in our five-member seats, effectively neutralises those so that the people who do make an effort to vote for particular candidates are the ones who impact the outcome of who actually is elected. I think that is a system that works really well. I am not sure that providing a how-to-vote card to voters is going to improve on that.

**THE CHAIR:** I might just come back to your earlier comment in regard to the numbers going into pre-polling, lessening the numbers turning up on voting day itself. In contrast to the federal election, do you think it is more difficult for ACT voters to select candidates on polling day for ACT elections than it is for federal elections? The ballot paper is quite different to the federal election paper. You have to consciously go through and make choices, whereas you can vote above the line for the federal election. There are normally only a number of candidates.

**Mr Green:** Just as a side issue, are you aware that the Joint Standing Committee on



Electoral Matters have put out an interim report today? They are recommending optional preferential voting for the Senate above the line, doing away with voting tickets, and providing for optional preferential below the line up to the number of vacancies. That, in a sense, changes how behaviour at federal elections is going to operate at a Senate level.

**MR RATTENBURY:** It will make it more akin to the ACT.

**Mr Green:** Yes, it will. They will still have an above-the-line option, but if people want to cast preferences for parties other than the party of their first choice, they are going to have to write 2, 3 and 4 above the line. It will quite radically change the way Senate elections happen. That is an interesting development.

When you look at the number of people who vote below the line for ACT elections, there is a much higher proportion in the ACT of people voting below the line for Senate elections than in the other states. I think that is partly because our ballot papers are smaller and because we only have two vacancies and not six. Also, I think people in the ACT are used to using our Robson rotation method of voting to vote individually for candidates. I think there are two things happening that are resulting in a higher proportion of people voting below the line in the Senate.

In terms of whether people find our system more difficult, I do not think so. I think that the informal voting level that we are experiencing in the ACT is about the same as for federal elections—about four per cent-ish. Again, looking at voters' behaviour, most people who vote informal these days are doing it deliberately. They are leaving it blank. They are writing messages. They are drawing pictures of donkeys. Some people number every column consecutively—1, 2, 3, 4, 5; 1, 2, 3, 4, 5; 1, 2, 3, 4, 5. It is difficult to know whether they are doing that deliberately or whether they are thinking they are voting formally and they are not.

The electronic voting system does not let people do that, and that does result in fewer informal votes than people voting by paper. That is just another reason why electronic voting is a good thing. I honestly do not see our method of voting, particularly as it is an optional preferential system, as being an impediment to voting compared to the Senate system.

**MR COE:** What about the advice at the top of the ballot sheet that says “vote 1 to 5 or as many as you want” or whatever it says? Do you think that, in effect, tells people to just stay in one column?

**Mr Green:** I do not think so. Our election report has tables at the back that show you how far people go with their preferences. The overwhelming majority—I think it is about 60 or 65 per cent—of people do vote just 1, 2, 3, 4, 5 and stop, or 1, 2, 3, 4, 5, 6, 7 in Molonglo. I think it is natural for people to vote within a party column because most people vote for candidates because they are candidates for a particular party.

You do see in ACT elections people voting across the columns. That is the exception more than the rule. I think that people are aware of the power of doing that, if they want to do that. It is really difficult to look at voting behaviour and try and infer things without actually doing any kind of systematic study of that by getting focus

groups in and saying, “Well, what do you actually think you’re doing when you’re doing that?” Just from observing how people use ballot papers, I think voting within a column is a very logical thing to do.

**MR COE:** Would you be able to find out—if you are able to take it on notice that would be good—the number of people that number just 1 through 5 that go across different columns? Are you able to extract that?

**Mr Green:** I will see if we can do that. Because we have got that all computerised that is possible.

**MR COE:** That, to me, would be interesting. I guess there is a chance that people only want five people on the whole ballot sheet, or it could well be that they are taking that initial advice as being just 1 to 5 and not seeking to go any further.

**Mr Green:** Just to clarify: we are looking at the people who have gone 1 to 5 or 1 to 7 in Molonglo?

**MR COE:** That is right, and going across two or more columns.

**Mr Green:** Two or more columns.

**MR COE:** Yes. Likewise, if there are any other statistics on that that you think would be interesting for the committee to see, I am sure we would be appreciative.

**Mr Green:** Is there a problem you are trying to address with that?

**MR COE:** I do wonder about whether the 1 to 5 instruction is, in effect, restricting the flow-on of preferences to and from other parties and also whether somebody thinks that they cannot just go and do No 1 or 1 and 2, or whatever it may well be.

**Mr Green:** If that is what you are looking at, it is also relevant to say if someone has gone 1 to 5 across columns, have they only gone 1 to 5? Because if they have gone 1 to 10 but not gone straight down a column then that would indicate to me that they are aware that they are doing it.

**MR COE:** That is right, and that is why I am particularly interested in people who just go 1 to 5 across columns.

**Mr Green:** Okay. We will see what we can do with that.

**MR RATTENBURY:** I wanted to ask about compulsory party levies, which you discuss, starting on page 20 of your submission. Could you just elaborate on that? Given the tithing seems to be compulsory, at least for some MLAs, do you think it is useful to characterise it as a gift under the legislation? Or is there another way it could be reported? That is perhaps the second half of that.

**Mr Green:** The commission has particularly raised the issue of tithings from members of the Assembly, but there is also the issue of affiliation fees from trade unions and similar arrangements. Before we had caps on donations, caps on gifts, it

did not matter whether or not a payment was categorised as a gift. Under the Electoral Act before 1 July 2012 there was not really a focus on whether or not we had to define something as a gift. Now that we have got caps on donations and limits on what you can do with gifts, the question of whether something is or is not a gift has suddenly become important.

What the commission has suggested in the report is that it would be helpful, in interpreting exactly what is or is not a gift, to put some clarity around some of these things that we have found that, arguably, might be gifts but they might not. So is a payment from a sitting MLA to their party a membership fee? Is it a tithe? What is it? Is it or is it not a gift?

I think you can argue that it is possibly a gift and possibly is not. I think it is really a matter for the Assembly to decide whether they think that ought to be considered a gift and whether that ought to be considered within the caps on donations, and then simply amend the Electoral Act to say this is a gift or it is not. I think that is really a matter for the Assembly to decide.

Similarly, with affiliation fees paid by trade unions, there are provisions in the Electoral Act that define a membership fee as being a gift if it is more than \$250 in a year. But is an affiliation fee a membership fee? Arguably, it might be and arguably it is not necessarily. Again, I think it would just be helpful if the Assembly put some certainty around that and amended the act to say it either is or is not a gift, simply because there is now significance to what is a gift and what is not.

**MR RATTENBURY:** I presume this would particularly become an issue in an election year, depending on how one defined these, based on some of the limits in election years. Am I right in thinking that?

**Mr Green:** The caps on donations apply per financial year. The caps on expenditure only apply from 1 January in an election year.

**MR RATTENBURY:** Yes.

**Mr Green:** So really we are talking about caps on gifts rather than caps on expenditure.

**MR RATTENBURY:** Thank you.

**THE CHAIR:** Any further questions for Mr Green?

**MR RATTENBURY:** You spoke briefly before about the penalty for failing to vote.

**Mr Green:** Yes.

**MR RATTENBURY:** I seem to recall hearing you say on radio an amount you had in mind. Is that something you wanted to touch on for the committee's benefit, what you think would be an appropriate penalty?

**Mr Green:** If you look at the penalties that apply across the other jurisdictions in

Australia, they vary quite a lot. We quote those in our submissions. I think the lowest is what we have got, which is also what the commonwealth has, which is \$20. The highest is several times more than that.

There are two aspects to the penalty. One is the penalty if you go to court or the penalty if you pay on the penalty notice that you receive from the Electoral Commission. If you go to court it is \$50. But if you go to court and get fined \$50, you also get fined court costs, which for the 2012 election are currently being doled out at \$69 in court costs. The court costs are actually more than the value of the fine, which seems to me to be a bit odd. The court penalty of \$50 was originally linked—I am sorry, it is no longer \$50. It is now half a penalty unit, so it has gone up.

**MR RATTENBURY:** It is \$70.

**Mr Green:** I think it is \$70 now. As far as I am aware, it is the only penalty anywhere in the ACT law that is less than one penalty unit. I suggest it would be appropriate to make it a penalty unit if you go to court, but that is not really the figure that deters people. I think the figure that deters people is the fact that you can pay a \$20 penalty when you are sent your first notice and you deal with the matter. Therefore, you are free of the obligation to spend an hour on election day to go out and vote. I suspect, if you look at the numbers, that more and more people are reaching the conclusion that \$20 is not too high a price to pay to get a few hours back on a Saturday. If what you are really wanting to do is provide a deterrent effect to make people who may otherwise think that they do not need to vote—if you want to make them go and vote—it needs to be something more than \$20; maybe \$40, maybe \$50. I think anything less than \$40 means you are probably in the situation where we are now where it is not a sufficient deterrent.

**MR RATTENBURY:** Thank you.

**THE CHAIR:** Mr Green, thank you for your time this afternoon. The secretary will get a copy of the transcript over to you to see if there are any errors you might like to change.

**CORNWELL, MR GREG AM**, private citizen

**THE CHAIR:** Good afternoon and welcome back to the Assembly, Mr Cornwell. We have some formal matters to go through, just the privilege matters. You are aware of those?

**Mr Cornwell:** Yes.

**THE CHAIR:** Could you, simply for the Hansard, acknowledge that you are aware of the privilege implications on the card?

**Mr Cornwell:** Yes, I am.

**THE CHAIR:** Thank you very much. I will give it over to you to make an opening statement if you would like.

**Mr Cornwell:** I thank the committee for allowing me to make a tabling statement to accompany my original submission. The statement does not seek to amend anything I already have put forward but, rather, to add to my comments.

Events in New South Wales over funding of political parties, arising from the ongoing ICAC inquiry, provide this Assembly committee with a very timely opportunity to address this complicated and important issue. No matter what procedures are put in place, the risk of breaking the funding laws by accident or design is very real. Further, efforts to avoid public exposure of deliberate or accidental breaching of such procedures involve a great deal of time and effort busy parliamentarians can well do without. Public funding of election campaigns with appropriate legal safeguards to avoid existing problems, therefore, is strongly recommended.

Secondly, and in keeping with my view that the proposed and supported increase to a 25-member Assembly can provide a rare opportunity to introduce additional, progressive measures to our ACT parliamentary system along the right lines I have already put forward. I believe the committee also could address a further refinement. I refer to term limits for elected members. Term limits occur in 15 United States state legislatures. As the name implies, they restrict members to a specific maximum term of office which, in most US states, is six or eight years—too short a period, in my opinion.

Our unusual electoral system, while allowing election of smaller parties and even independents, also gives sitting members, especially of major parties and particularly ministers, an advantage over contenders from their own party. This is not always desirable and is unsatisfactory long term, creating career politicians. We all lose our zeal and become complacent over time. The need for fresh thinking and different approaches to current problems and new challenges will not necessarily be solved by existing representatives.

The question is, of course: how long should our elected MLAs serve? Because the ACT Assembly has four-year terms, I suggest our term limits should be a maximum of 12 years or three terms. This would allow members enough time to make a

contribution to the parliament and the community and also allow access to a pension or superannuation fund. Such a term also would allow fresh blood into the legislature, possibly avoiding bitter party pre-selection battles and the difficulty of culling tired, burnt-out representatives.

Certainly, there are issues. What do you do about three-term members, particularly leaders, on the cusp of victory? Or those who serve one term and return after a four-year break? However, I am sure these matters can be sorted out by reference to what happens in the USA and, I might add, without a study tour, gentlemen.

**THE CHAIR:** That has all gone now. You do not have to worry about that.

**Mr Cornwell:** It should not preclude the committee considering the proposal, ideally with a start date of the 2016 election. I would ask, therefore, that the foregoing be treated as an addendum to my original submission.

**THE CHAIR:** Thank you very much. I might just go to your comments on public funding. I guess the thing I see here is: how would the public respond to this extra cost to them while at the same time increasing the number of parliamentarians in the ACT?

**Mr Cornwell:** That is a good question. May I address the latter point first. I have been somewhat surprised at the relative lack of comment that I have received on the matter of increasing the numbers to 25 members. A couple of people have mentioned it to me unfavourably, I might add. But the majority of people—and I think I mix around a reasonable amount these days, and they certainly know of my political involvement and interest—have not said anything.

Whether this is because they accept the inevitable—and one hopes that they have thought it out carefully and realise how important an increase in Assembly members would be—or, sadly, whether they simply do not care, I am afraid I do not know. But it certainly has not had the effect that I expected when the announcement was made that it might be moving to 25.

So far as the question of the costs associated with funding of political campaigns is concerned, again I think this is something that we are going to have to wear, a bit like the increase in politicians or, indeed, politicians' salaries. You are never going to win with thinking people, I suppose, on those things—people who take an interest in politics, let me rephrase that, not necessarily thinking people. Therefore, we just have to cop it. I do believe, however, that if we do not address the whole question of government funding for elections we are going to be bedevilled by these problems all the way through.

I think decent people right across the political spectrum are going to be caught. They are not necessarily breaking the law; it is not a deliberate decision that led them into whatever problems that arise. But at the same time, they are going to be pilloried for it.

**THE CHAIR:** Questions, colleagues, for Mr Cornwell.

**MR COE:** I think you might well have grabbed a headline with your opening

comments. You certainly have not lost it. I did not expect to be sharing a page of *Hansard* with you either. It is a pleasure. With regard to what Mike Baird came out with publicly a week or two ago regarding 100 per cent funding of campaigns, could you expand on what you think the pros and cons of that could be?

**Mr Cornwell:** Obviously you cannot have less than 100 per cent if you are going to do this public funding otherwise you are back where you started from—accepting donations from all sorts of people. I could not put a figure on it, although there is an opportunity of course at this point, if it is 100 per cent government funding, to cut back on some of the expenses.

We all know what happens in the US of A. The whole thing becomes absurd. One presidential election finishes and they are starting on the next one, at least fundraising. There could be a limit put on the amount of money that is allocated.

Perhaps one way of doing it, although I can see problems about this, is simply to put it on the number of votes that have been cast in favour of particular parties. That, it could be argued, would be unfair, because, clearly, the party that won the election would be the one who gets the most money.

But I do not see any problem that we have to fund 100 per cent. I do not see that there are any downsides, except that it is regrettable that it had to happen. But I cannot see a way out of it because unless we do this, we are going to constantly have interference, if you like, from people who can afford to make that interference. Secondly, of course, as I said earlier, you are going to have accidental situations occurring where decent, honest politicians are caught up in it.

**MR RATTENBURY:** In your submission you made a number of comments about both the 100-metre rule and having how-to-vote materials inside the polling place. I think they are related commentaries. The Electoral Commissioner has put it to us that, in some ways, having how-to-vote material is counter to Robson rotation and the spirit of that. Would you like to elaborate on your comments in light of that observation?

**Mr Cornwell:** I heard Mr Green's comments, yes, with interest. But I have a problem with the current situation of how-to-vote cards in terms of the ACT elections, Assembly elections. First of all, the 100-metre rule does not seem to work very much anymore. As I pointed out in the submission, now we have got fences around the schools, which are mainly polling booths, you have a problem that people are channelled towards those entrances, which means the 100-metre rule can, in fact, break down and people handing out the pamphlets can still catch the people coming in.

On the question of putting it in the polling booths, as I said in the submission, I would like to see electronic voting full stop. However, if people needed guidance—I do not expect everybody is going to adapt completely, 100 per cent, to electronic voting at the next election or any election—and we needed to have how-to-votes, then I would much prefer to have them within the booth. Whether they were sitting as you went in and helped yourself or whether they were actually in the voting booth, I cannot really comment. My personal view is that they could be sitting there for you to help yourself.

The only problem is that we would then run into the privacy rules that seem to be rampant in this territory and there would be claims that if somebody took a Liberal how to vote, we knew how they were going to vote. I do not count that as very important, but other people might. So we have got to come up with another alternative of where we put the how-to-votes.

The same problem arises, I might add, if you put them around the booth. I presume people would be complaining if somebody looked up at a Labor how to vote. Therefore, their privacy might be being breached, because people could see that they looked up to that page. I do not know.

**MR RATTENBURY:** I think the big issue would be who got to go where in a booth.

**Mr Cornwell:** That is another point, yes. There could be an argument about where we are going to put them, in what order would you put the how-to-votes.

**MR COE:** Laminated how-to-vote cards at each booth?

**Mr Cornwell:** That is a possibility.

**MR COE:** They could well be defaced as well.

**Mr Cornwell:** Yes. But I do feel that the 100-metre rule and handing out how-to-votes outside the booths is old hat, and I think we should get rid of it.

**THE CHAIR:** We also talked about other jurisdictions like Tasmania where on the day itself there is no campaigning, although Mr Green advised that there is a frantic move to put posters up just prior to midnight the night before.

**Mr Cornwell:** I attended a vote down there in Hobart, and it was interesting that at one of the booths—I think it was the Leader of the Opposition lived within 100 metres of the polling booth—he had to take down a vote-for-me sign in his front garden because he was obviously in breach of the electoral rules. But, yes, certainly down there the only things you found around polling booths were cake stalls. And it worked very well.

**THE CHAIR:** Questions, members.

**MR COE:** I think New Zealand has also tackled this issue, and they have gone quite a long way and restricted all political influence or partisan influence on election day. Even with literature or anything, you are not meant to be advocating for one party or another, I believe. I might have stretched that a little.

I was wondering what you think about electorate names. If we go to five electorates in the ACT, should the three electorate names that we have at present be retained? If they are retained, is there a perception that someone could be abandoning their electorate, even though they could be representing the same people?

**Mr Cornwell:** No, I do not really have a view one way or the other. I think that we could retain the three electorate names if we wish. The only problem is that it might



cause a little confusion to people who perhaps previously were in Molonglo and now found themselves in something new, perhaps Cornwell or something like that.

**THE CHAIR:** I was going to ask that.

**Mr Cornwell:** On the other hand, I am not at all sure that that would be a major consideration for people in a new electorate. After all, think of the federal electorates where chopping and changing goes on all the time. You are in electorate X once and the next election you are in electorate Y. It does not seem to be a major problem.

**MR COE:** And with regard to electronic voting, at present it is nearly impossible to cast an informal vote with that system. Do you think people deserve the right to cast an informal vote?

**Mr Cornwell:** Yes, I do. And I would like to see it incorporated. The alternative, I suppose, is not to vote at all, in which case then you get fined. That does not seem very fair to me. I think there is a need for an informal vote, but may I just make the point—and I was listening to Mr Green—that I still believe that there are a lot of people voting informal who believe they are voting formal. But there is no way that you can check this. If you scrutineer—I will not say in a great number of cases—you do see the number of ballot papers with ticks all over them, right across, as if to say, “These are the people I want.” Of course, it is an informal vote. I do not see how you can educate those people, because they think that they are casting a formal vote.

**MR RATTENBURY:** Is that part of your desire to have completely electronic voting?

**Mr Cornwell:** Yes, I think it would improve it. But I also believe that electronic voting has to come and probably, as I think I have said, the sooner the better. Whatever way, whenever we introduce it, it is going to be expensive. But the longer we leave it, it is simply going to be more expensive.

**MR COE:** I should say I made a mistake. The Electoral Commissioner has kindly passed on a note to say that people can cast an informal electronic vote by choosing no candidate.

**Mr Cornwell:** Thank you. That is good. I suppose, as I say, the only way you can really see an informal vote is if they have scrawled something rude all over it or just put a line through it. But it has worried me, the number of people who think that they are casting a formal vote when they are not.

**THE CHAIR:** I did ask the commissioner earlier as well about the recommendations from the expert group on increasing the Assembly size further, at the election following, to 35 members. Do you have any comments on that?

**Mr Cornwell:** Yes. I would not like to see us commit ourselves to that. I think that it may grow to 35 eventually, but it depends on the population. I am conscious of the fact that Tasmania cut it back from 35 to 25 and the Northern Territory have been quite happy to operate at the 25 level. I think we can probably afford to leave it at 25 for a few elections and just see how the population grows.

**MR RATTENBURY:** I come back to the discussion on the 100-metre rule. You have talked about ending the 100-metre rule, but then I think you say all canvassing outside polling booths should be banned. Earlier we discussed this issue of whether you then extend that 100 metres to a couple of hundred metres, but we then start to get into shopping centres. Are you suggesting no canvassing at all on election day or simply just not near the polling booths?

**Mr Cornwell:** I do not know how you would—

**MR RATTENBURY:** I think the practice at the moment is some candidates will be in shopping centres on election day morning.

**Mr Cornwell:** Yes, I see what you mean. I had not really thought of that. I would imagine that it is a bit like putting a how-to-vote card out in a newspaper on polling day. Most people have probably voted before they sit down and read the paper. As to candidates being there on polling day, no, I had not thought about it. Frankly, I would not recommend that they do that. But so far as polling booths are concerned, no, I would not mind banning the whole idea of handing out how-to-votes there.

The other point I might make is that, even in regard to putting up signs around the booths, I am not convinced that they have much effect. The problem that we are facing is that we have always done it this way. We do not know whether it has any effect or not. All that effort might be quite useless. But nobody—and I can understand it, it is human nature—is game to attempt the alternative.

**MR RATTENBURY:** You talked about a limit of three terms per member. And then you canvassed an issue of a sitting chief minister, for example, being at that limit. The view would be they would just step down?

**Mr Cornwell:** Yes, I conceded, I think, that there would have to be a few adjustments. I was looking, as I said, at someone on the cusp. We would have to consider that. But as a general rule, if you have been there for three terms and you have not set the world on fire, there is probably a good chance you are not going to. I think this is not an unreasonable term—12 years, after all—to achieve something. But I could concede that, yes, there would be situations. Menzies would have been in trouble, as would Churchill and a few other people I can think of.

**THE CHAIR:** His name was raised the other day, actually.

**Mr Cornwell:** But the concept of term limits, I think, has a lot of merit. I know there were problems in the United States initially, that they were too short. That was really a mess. But I think the concept is a good idea, and I would commend it to the committee.

**MR COE:** Is the issue 12 years or three terms? I note you did four.

**Mr Cornwell:** Three terms. Thank you, three terms, because we have got four-year terms and that is 12. But if the committee decides that that is not enough and you want four terms to 16, again I do not mind. But the concept, as I say, the idea of term limits,

has a lot of merit, in my opinion. I would suggest you think about it.

**THE CHAIR:** Thank you. It has been interesting this afternoon. We will get a copy of the transcript to you to have a look for any transcription errors.

**Mr Cornwell:** Thank you. I will be away out of town until 4 June. I am just alerting you. So you might not get it back too quickly.

**THE CHAIR:** That is okay.

**Mr Cornwell:** Thank you.

**THE CHAIR:** We will organise the secretary to keep in touch with you. I look forward to seeing the Cornwell constituency in 2016 if the electorates are renamed.

**Mr Cornwell** Thank you very much.

**WARHURST, EMERITUS PROFESSOR JOHN**, private capacity

**THE CHAIR:** We will now call on our next witness, Professor John Warhurst. Good afternoon, professor. If I could just remind you of the privilege card in front of you there, the pink card. If you could just acknowledge for the *Hansard* that you understand the implications of the privilege card?

**Prof Warhurst:** Yes, I understand the implications of the privilege statement, I believe.

**THE CHAIR:** Thank you very much. We have a couple of notes from you, but if you would like to begin by making an opening statement to the committee?

**Prof Warhurst:** I have not made a written submission, as you know, but I am very happy to participate in this inquiry in this way. I will keep my opening remarks very brief. I support the increase in the size of the Assembly to 25 members for the next election, and I am pleased that the two major parties support it too.

This move has my support because I broadly accept the arguments for such an increase relating to the work of ministers in governance, the work of the Assembly as far as parliamentary work is concerned, the work of the opposition and the work of individual members of the Legislative Assembly as far as representation and communication with the community is concerned.

My slight reservations on that—that is, on the overall case—relate largely to the nature of the ACT as a city-state with a relatively small territory, but I think the case for reform overall is very strong. I realise there are other options in terms of increasing the size of the Assembly, and I have explored some of them on an earlier occasion. In particular, there is some case for seven members per electorate. I think the Electoral Commission guidelines effectively rule out most of them in a practical way, which I would be happy to explain. I also believe that a smaller increase of the Assembly would not achieve enough of the purposes of an increase to justify it—that is, 21 members, for instance, which is a number which sometimes is talked about.

Finally, I am not persuaded yet of the need for an immediate further increase in the size of the Assembly. I can see that as a longer term aspiration, but I would prefer to wait and see how the 25-member Assembly works and make a judgement at that time. It seems to me a little bit awkward to increase the size of the Assembly at two successive elections. I would have rather been in favour of either one big increase or the increase that is proposed and then perhaps waiting for, let us say, two terms before making a further increase. But I would wait and see on that one.

I should say they are the only matters that I really feel expert to make a comment on to the committee. I was given the opportunity of talking about some other of the terms of reference, but I passed on that opportunity.

**THE CHAIR:** Thank you, Professor Warhurst. I noted the article that you had recently—“Assembling the battle lines”.

**Prof Warhurst:** Yes.

**THE CHAIR:** In that you talked about the cost of the Assembly rising and the Remuneration Tribunal's decisions on payments for politicians. You have said that there is a perception in the community that those sorts of things do not go over very well. You have said here that the perception is not fair, but it is still real, and breaking down that perception is not easy.

**Prof Warhurst:** Yes.

**THE CHAIR:** Do you have any views on how that could be achieved?

**Prof Warhurst:** The short answer is no, because I think community education is difficult at the best of times: clearly, the more widely the work of the Assembly is known in the community, the more attempts that are made to educate the community in various ways to target particular groups—the social media, the electronic media—targeting young people, in particular. I think that, to me, is the big task—looking at the lower enrolment figures for younger people up until about 25 or even 30, I think, in terms of enrolment. I do not have one particular suggestion.

I think I made the point then that what we are dealing with is not an issue restricted to the ACT. This is not even restricted to Australia I do not think in terms of attitudes towards established democratic institutions and attitudes towards established political parties. I think everywhere you look almost the established way of doing things is being called to account. An increased number of people are looking for alternatives as far as representation is concerned. These are all things that you know very well, I am sure. I think as a community we just need to do our best to educate the community.

I made a suggestion on an earlier occasion which comes to mind—that is, I think there may be a case for a non-government role in this. Let us call it citizens for the Assembly or citizens for ACT democracy. One of the problems is that if all of the educational efforts come from the Electoral Commission or the Assembly or the political parties or sitting members of the Legislative Assembly, some people might say, “Well, they would say that, wouldn't they? They've got a self-interest in talking up the enterprise.”

Along with other social issues, there is sometimes a role for a wider group in the community to take this on board. I am not sure exactly how it would be done, but you do see groups in the community who try and tackle these issues. If, for instance, the increase in the size of the Assembly goes ahead—and this would depend on the political dynamic—I would not like to see it just being left to members of the Assembly to explain themselves to the community, if there is an adverse backlash about an increase. I think that is the time for other people in the community, like me and others with higher profile, to defend the increase and to say why we think it is necessary.

I think one of the problems is that the work of assemblies and members of parliament and ministers and oppositions is still largely a black box as far as the general community is concerned. They either do not know or they do not care. So it is very hard to convince the community of the worth of, say, increasing the size of the

Assembly and the job of a member. All of these things, I think, are not hot-button topics. If you went out into the street and asked people, “What does the Assembly actually do or what does a member of the Assembly actually do?” they would not be able to do it justice, I do not think. That is what we have to try and break down.

**THE CHAIR:** There seems to be a view, which I have seen, where there will be conversations in the community, for example, of politicians, and you will hear the phrase, “No, we don’t like politicians.”

**Prof Warhurst:** Yes.

**THE CHAIR:** But they tend to like their local member.

**Prof Warhurst:** There is a disconnect there, I think—

**THE CHAIR:** Yes.

**Prof Warhurst:** which you are right in pointing to. Somehow when you are talking of the institution as a whole, people glaze over a bit and are likely to hold a different view to their view of some of the members of the Assembly that they do know. That is not true of everyone, I do not think, because there are some people who, even when you get down to the individual level, would be critical. There is a larger group of people who, on reflection, are happy to accept the role that the Assembly and politics generally play in their lives. If the news is bad and the economy is bad and people are losing their jobs and all these sorts of things then that does not help in selling the case for an increase in size of the Assembly, I suspect.

**THE CHAIR:** Questions, colleagues?

**MR COE:** Yes. Professor, what are your thoughts on 100 per cent funding for political campaigns?

**Prof Warhurst:** I am not attracted by that; 100 per cent public funding?

**MR COE:** Yes.

**Prof Warhurst:** No. I would like to think that there is a role for private funding of electoral campaigns and for individuals to get involved. It really is a vexed question. Individuals and organisations, by the way; I am not in favour of corporations or collective entities being ruled out of participating through funding election campaigns either. I can see some of the problems which are evident in various ways. I just think, connected to the previous question, that somehow it disconnects the community from the enterprise of democracy in a way which I think is not a good step forward. Perhaps it is idealistic, but I like the idea of individuals organising chook raffles and organising themselves to support candidates and the party of their choice. I think it would be a bad day, and I think it would tend to create a greater distance between the Assembly and the community, if full public funding came into play.

**MR COE:** Going to that perhaps idealistic view of the chook raffles, the lamington stall or whatever it might be, is there an issue if that chook raffle can be totally

gazumped by a massive donation from someone, be it an individual or an organisation?

**Prof Warhurst:** Yes, I think there is. I am happy to talk about caps on donations and full transparency. I believe the transparency we have often does not come quickly enough. I am in favour of a transparency system whereby, if there is an election, the donations to the contenders at the election ideally should be available as they are given in the lead-up to the election.

I think there is an age-old problem of the wealthy organisation or the wealthy individual gazumping everyone else and making everyone else's efforts look almost pitiful in terms of the amount of money they can raise. But other than changing the society in which we live—and I am not in favour of that—then I just think we have got to run with that. We have got to put reasonable restrictions and reasonable regulations around the extent to which all collective organisations and individuals donate. I think the community expects that. I am not in favour of banning any of those things or unduly restricting them. I want them to be as transparent as possible.

**MR COE:** Do you think that all organisations should be treated the same by way of caps and their ability to influence an election, be they not-for-profit or commercial or unions or any other organisation?

**Prof Warhurst:** Yes, more or less, I do. I can see some of the arguments for some organisations being in a greater position to manipulate the arena of the playing field for an election. Broadly speaking, I would like a regime which covers everyone without trying to single out anyone in particular. I take an example which has been in the news a lot, ruling out developers from making donations or trying to rule out unions from making donations. I see those as short-term fixes related to particular situations. I would hope that there would be a way in which all participants in the community could be treated equally, even though they are not equal—but treated equally.

**MR RATTENBURY:** Given your interest in democracy, I might just throw a couple of issues at you that have come up generally.

**Prof Warhurst:** Sure.

**MR RATTENBURY:** One is the level of fines for people who fail to vote. At the moment in the ACT it is in the order of \$20.

**Prof Warhurst:** Yes.

**MR RATTENBURY:** There have been suggestions that should be raised to increase the incentive to vote.

**Prof Warhurst:** I saw that; I looked at some of the other submissions. I am not very much in favour of those. I can see \$20 to \$50 maybe, but I saw someone suggesting \$100 or even \$200. That becomes punitive. You can have a big stick, but I do not think there is much point in hassling the non-voter too much. I am not sure how effective that is. I am far from an expert on this, but the people who get caught seem

to be the ones who want to make a statement about their non-voting rather than the people who are just not tuned into the system—they are travelling; they are busy: those sorts of things. I would just give them a slap on the wrist. You could raise it to a high level, but I do not think that would increase the percentage of those who vote. I think ultimately there might be a backlash if it was applied rigorously to individuals who did not vote. I am on the side of a lower figure.

**MR RATTENBURY:** Thank you. One of the other issues that are floating around is the question of whether we have how-to-vote cards available. In the context of this Hare-Clark, Robson rotation electoral system, again from your general interest in democracy, do you have a view on the appropriateness or otherwise of having how-to-vote cards in this system?

**Prof Warhurst:** I am actually in favour of how-to-vote cards. It is partly my view that I find voting for the ACT Assembly a bit antiseptic. I rather like all of the supporters of the political parties milling around. I do not think how-to-vote cards do a great deal of harm. I can see the arguments why in the Hare-Clark system how-to-vote cards might be contentious within the parties in terms of urging a vote for one person rather than another. But, in general terms, I would be willing to look at a system which would be a bit more relaxed about how-to-vote cards and activities outside the 100-metre limit or whatever it is.

**THE CHAIR:** There seems to be a completely different feel at a campaign or a booth for an ACT election and a federal election. There is a much more, may I say, festival feel at a federal election where you have got campaigners handing out how-to-votes but you have barbecues and local community stalls as well.

**Prof Warhurst:** I like that feel. If there are particular elements of it which there are very good reasons not to encourage then look at those. My understanding was that originally the how-to-vote cards were banned because it was felt that the so-called party machines might use them in a way which took away from the individual voter the full freedom to explore the range of candidates for their particular party—Liberal Party, Greens, Labor. I would be willing to risk that to engender some more of this sort of festival feel about it. After all, it relates back to the very first issue of attitudes towards democracy. Why are young people under 30 not enrolling as much as they ought to? Again, maybe it is drawing a long bow, but I think the more we can encourage that sort of activity—and it would apply, also, to try and encourage campaigning in the community, all of those sorts of activities, which I think might connect with people who otherwise do not take much of an interest in the whole business and really go along under sufferance rather than anything else.

**THE CHAIR:** Further questions?

**MR COE:** You said earlier that how-to-vote cards might be a little problematic for the parties.

**Prof Warhurst:** Yes.

**MR COE:** I can certainly imagine that. Each of the parties might well have multiple people handing out different how-to-vote cards.



**Prof Warhurst:** That is right. It could fragment the party, I can see that, and it might defeat the purpose—if it is the purpose—of allowing the parties to present a number of candidates, without fear or favour, for the citizens to choose between. I think the parties have other ways, haven't they, if they really wanted to do that—through the media and through doorknocks? “Josephine Blow is the favoured candidate for this party in this electorate”. I would like to loosen up the how-to-vote card area.

**MR COE:** Of course, there are no restrictions on the actual how-to-vote; it is more the difficulty in distributing them which is the challenge.

**Prof Warhurst:** Yes.

**MR COE:** With regard to the transparency of donations, do you have a view on what the threshold should be before a donation is published?

**Prof Warhurst:** I do not have a specific number in mind. I would err in favour of a lower threshold rather than a higher threshold. I would take the risk that some individuals might feel that the transparency might do them some harm by making clear—if anyone was interested—their affiliations to the general community. As long as it is administratively feasible, I would aim for a lower threshold at which transparency should kick in. My worry is that individuals find ways around thresholds through multiple donations, through dodgy companies and this sort of thing. But that is another issue. I am in favour of a lower rather than a higher threshold.

**MR COE:** For those associated entities, and I particularly mean the recognised associated entities rather than the perhaps dodgy ones that occasionally come up in various jurisdictions, how do you see the transparency of income for those associated entities being treated—for instance, if a football club makes a donation and that football club received a \$30,000 sponsorship that year? How do you get around those sorts of issues?

**Prof Warhurst:** I am not sure how you get around them, but I am generally in favour of widespread transparency as much as possible, not just for election campaigns but for administrative expenses and for all of the income of the political parties who are standing for election. To the extent that you have to try and sweep up associated entities and various other ways of channelling, laundering, money from donors to political parties, let us try and be as rigorous as we can and as open as we can. That would include the money which is moving from the federal level to the territory level and back again. It would apply to those close allies like trade unions. It would apply to all community organisations. Some of them may be in business just to support a particular political party. Others may not. They may have a genuine non-political purpose, but they put money into the political system.

Transparency is still a fairly weak instrument, as far as I am concerned, in that some people think they are achieving a level playing field by transparency. They are not, in my view. Transparency is just laying out the state of play. It may, in fact, be a very uneven playing field. But if that is the case, let us try and catch all the money in the system and make things as transparent as possible. Catch all the money, catch all the donations at different levels coming from different entities for administrative purposes

and for electoral campaign purposes, and let us get it out there in the public domain on a reasonably frequent basis. Surely modern technology would allow us to do that and not wait for annual reports. Really, the horse has bolted by the time some of the transparency comes into play in all jurisdictions in Australia at the moment, I think. I think it would be great if the ACT took a lead in trying to beef up its transparency provisions in any way that it can.

**THE CHAIR:** Thank you very much, Professor Warhurst, for coming in this afternoon. We will get a copy of the transcript today over to you as soon as we can for any errors that you might see.

**Prof Warhurst:** Thank you.

**The committee adjourned at 4.52 pm.**