LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON THE 2016 ACT ELECTION AND ELECTORAL ACT

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

Members:

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

TRANSCRIPT OF EVIDENCE

CANBERRA

THURSDAY, 27 JULY 2017

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

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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Amended 20 May 2013

The committee met at 9 am.

SPENCE, MR ROHAN, Acting Electoral Commissioner, ACT Electoral Commission

THE CHAIR: Good morning, and welcome to the first hearing of the Select Committee on the 2016 ACT Election and Electoral Act. The select committee was set up by the Legislative Assembly on 15 December 2016 and has been primarily asked to look at the operation of the 2016 ACT election and also to consider the ACT Electoral Act and other relevant legislation and policies with regard to three related matters: lowering the voting age, improving donation rules and donation reporting time frames, and increasing voter participation in elections and encouraging political activity. The committee has also been asked to consider and report on any other matter it considers relevant to its terms of reference. The committee has received 30 submissions, all of which are published and lodged on the committee's website. The committee invites feedback from interested persons on issues raised by the submissions.

The committee currently plans to hold three public hearings, the first of which is this morning. There will be two other planned hearings in August and September. Today's hearing is public and is being recorded by Hansard and is accessible through the Assembly Committees on Demand webstreaming site.

Today I would like to welcome the Acting Commissioner, Mr Spence. I note that your deputy, Ms Oanh Nguyen, is also present. I expect you are aware of the privilege statement on the pink card on the desk in front of you?

Mr Spence: I am.

THE CHAIR: Thank you. Before we proceed, one question I will ask of all witnesses in the inquiry is whether you are affiliated with any political party.

Mr Spence: I am not.

THE CHAIR: Thank you. Mr Spence, we have your two submissions to the inquiry for discussion and consideration today. Would you like to make an opening statement in relation to the inquiry or your submission?

Mr Spence: I welcome this select committee inquiring into the 2016 election and the Electoral Act. While I believe the ACT has a very strong electoral system, I welcome any opportunity to improve upon it. I would like to note that there are a number of inaccuracies about the conduct of the 2016 election in some of the submissions, and I might address some of those if they come up throughout the discussion.

MS CHEYNE: I want to talk first about "electoral matter" and the communications allowance. I guess I am talking more about the operation of the Electoral Act to begin with, which probably is not covered off in too much detail in either of your submissions. I am particularly referring to the article that appeared three days ago where there were a range of different views expressed about the operation of the communications allowance and the Electoral Act, and the definition of "electoral

matter". There were some different views expressed not only by you but also by some Labor Party representatives and the Chair of the Remuneration Tribunal, so I wanted to see if you could talk us through the operation of the Electoral Act with respect to how the communications allowance is now working for MLAs.

Mr Spence: My understanding is that there is no longer a communications allowance; it has been abolished. The former DOA amount, which was also abolished and which was replaced with the communications allowance, provided for approximately $15,000 that was rolled into an MLA's salary. The most recent determination by the Remuneration Tribunal essentially abolished the term "communications allowance" and just provided that additional money in the MLA's salary.

In terms of the Electoral Act, if an MLA is producing electoral matter as defined by the Electoral Act, that needs to be reported in an MLA's annual return and also in the party's electoral return for electoral expenditure during an election year. So that is the current environment that we find ourselves in.

MS CHEYNE: Do you think that the current definition of "electoral matter" in the Electoral Act is workable both within election years and outside election years for MLAs, in terms of how they attempt to communicate with their electorates?

Mr Spence: I would think that it is, in that it is quite specific about what constitutes electoral matter, and the reporting of that is an important part of a funding disclosure scheme.

MS LE COUTEUR: We recently had probably about a half-hour discussion in estimates with the Office of the Legislative Assembly in which it was very clear that the combined gathering in the room was unclear what was meant by "electoral material" as distinct from "communicating with your constituents". Is there anything that you can do to clarify this? Clearly, if you are sending something to one person, you are communicating with your constituents. When does it start being electoral? There is a considerable lack of clarity about what it means in practice.

Mr Spence: Simply writing to a constituent is not the definition of "electoral matter".

MS LE COUTEUR: Yes, but if you write to 10,000—to a multiple of them?

Mr Spence: It entirely depends on what is included in that letter.

MR WALL: From memory, Mr Spence, the definition, though, is "material that is likely to influence a voter in an election", is it not?

Mr Spence: That is part of it. The act reads:

> … it contains an express or implicit reference to, or comment on—
>
> (a)the election; or
>
> (b)the performance of the Government or Opposition, or a previous Government or Opposition; or

(c)the performance of an MLA or former MLA; or

(d) the performance of a political party, candidate or group of candidates in the election; or

(e) an issue submitted to, or otherwise before, the electors in relation to the election.

MS CHEYNE: So if I said in a letter, "I did this and now the government is delivering on X," does that fall under at least two points of that definition, as in I am commenting on an MLA's performance and also on the government's performance?

Mr Spence: Under the current definition of "electoral matter", I would—

MS LE COUTEUR: This is the point. Basically, all the correspondence we have with constituents is electoral matter by that definition. We are going to say something about—

MR WALL: We are not doing our jobs if we do not.

MS LE COUTEUR: That is the basis of our communication. We have managed so far only to get the clarity that if you just write one letter to one individual constituent then it is not electoral. But beyond that I am unclear.

MR WALL: I have an issue at the moment: two residents live next door to each other. Both have the same issue. If one letter is not, is two letters?

Mr Spence: It is.

MR WALL: The question is: do you, as the acting commissioner, have concerns that the expenditure cap that is placed on candidates in an election year then has an impact on the free functioning of the Assembly, given that our day-to-day work and our ability to freely carry out our role as elected representatives falls under an electoral cap, whether or not we are candidates contesting that election?

Mr Spence: The point to make here is that this is the current legislation. If that is not the view of the Assembly then the Assembly can alter it.

MR WALL: What is your professional and learned opinion as the acting commissioner?

Mr Spence: My opinion is that, yes, they currently fall within the definition of "electoral matter".

MR WALL: Do you believe that it has an impact of restricting the free operation of the parliament between the January and October period, or that it could possibly?

Mr Spence: It is just a matter of the funding and disclosure scheme and the transparency that is required with that. The intention of that is to provide a level playing field. If it is the view of the Assembly that that restricts the role of an MLA then amendment to the act, if that is what the Assembly sees fit, could be

appropriate.

MR WALL: Would you see a workable solution being possibly the introduction of a separate operations or communications budget as part of the function of MLAs' offices—not funded, but an allowance under the Electoral Act in election years, to recognise that, in the day-to-day communications and communicating with our electorate and our constituents, we are still expected by the community to serve until election day without impediment?

Mr Spence: That was how the system used to work. There is provision within the act currently—it is still in there—that if there is an allowance provided to an MLA by the Assembly then that is not included. That is how it used to work. If that is still the intention then the Assembly might like to work with the Remuneration Tribunal to reinstate something along those lines. I think everyone wants the system to work.

THE CHAIR: And work fairly.

Mr Spence: Yes. The Electoral Commission simply has an Electoral Act to ensure compliance, and that is what we must do. With respect to the money that comes to an MLA from the Remuneration Tribunal, we do not have a say in how any of that is worded. We just have to comply with what we have got. In the current process, that is how it works. That is the only jurisdiction I have.

MS CHEYNE: But in seeing how it works, noting that you have to work within the legislation and that is what you are asking us to comply with, do you think there is room for improvement?

Mr Spence: I suggest that if that is the way that MLAs want to do it then they need to specifically rule out those funds from disclosure.

MR MILLIGAN: I refer to the lowering of the voting age. Obviously, a lot of research has been done on this across the country, in other states and territories as well as at the federal level. You have provided quite a significant amount of information in your submission. Are you able to give us a brief understanding, if we were to lower the voting age, of what sort of impacts it would have and what other potential legislation we would have to change to enact it?

Mr Spence: The complexity is in the law. The self-government act currently provides that every person who is entitled to be enrolled is required to claim enrolment. So that provides for compulsory enrolment. If you were to lower the voting age to 16 and 17, that would, in effect, cause compulsory enrolment for 16 and 17-year-olds. If you wanted to change that then the commonwealth government would need to amend the self-government act. So that is the situation with enrolment.

In terms of voting, compulsory voting is also entrenched in the ACT law through the Hare-Clark entrenchment act. So if the voting age were to be lowered to 16 and 17, as it currently stands, voting would also be compulsory for 16 and 17-year-olds. If you wanted to change that and make it voluntary voting then it need would either a two-thirds majority in the Assembly or a simple majority and then it would go to a referendum—a majority in the referendum. Those are the legal amendments that

would be required if you wanted to provide for voluntary enrolment and voluntary voting. If it was not to be voluntary, the effect of lowering the voting age would be that voting would be compulsory and there would be the potential for a financial penalty for a 16 and 17-year-old to vote. That would be the reality of the situation.

Because the ACT, if this was to happen, would be the only such jurisdiction in the country, it would be out of line with the laws in other jurisdictions. So any 16-year-old or 17-year-old moving to the ACT all of a sudden would have voting rights, and if they were to move out they would no longer have voting rights. It is not uncommon for an ACT election to be held in very close proximity to a federal election. In 2008 or 2004, they were only a week apart. On those terms, a 16-year-old could vote in an ACT election, and a week later would not be able to vote. So there is potential for confusion there.

There are also budgetary issues that would need to be addressed in terms of maintaining a roll for ACT-only electors and the type of information campaign that we would need to provide in the lead-up to an election to ensure that that confusion was minimised as much as possible.

MR MILLIGAN: If the voting age was lowered, would that enable 16 and 17-year-olds to also nominate and run for an election?

Mr Spence: At present all electors who are eligible to vote can stand as candidates because the act specifically states that they must be 18 years of age and eligible. That is a fairly standard harmonisation between voting and the ability to be elected and potentially be a minister. The Assembly could choose to maintain that harmony by also lowering the age of a candidate or they could choose to keep them out of step and remain at 18. That would be an Assembly decision.

THE CHAIR: You briefly touched on the suggestion that if we kept voting compulsory and lowered the age to 16 there would be financial penalties for those that do not vote. What are the current financial penalties?

Mr Spence: It is a prescribed penalty at the moment, at $20. If they do not have a valid and sufficient reason for not voting and they fail to pay that $20 prescribed penalty, the potential is to go to court. Because it is linked to a penalty unit, it is currently half a penalty unit, at $75, plus court fees.

MS LE COUTEUR: Could it be changed so that a valid and sufficient reason was being 16 or 17?

Mr Spence: There is nothing within the act at the moment that specifies a list of valid and sufficient reasons other than being overseas.

MS LE COUTEUR: We are talking about potentially changing the act, so would that be a possibility?

Mr Spence: I am not a legal expert. Because compulsory voting is entrenched, I think that would require legal advice on whether that could be included.

THE CHAIR: Penalties for young people, particularly if they are still at school, could be a major financial burden on them. You mentioned that at the last election the informal vote was quite low. Could you see that lowering the voting age might increase the informal vote?

Mr Spence: Because we cannot track an elector's vote to that elector—and rightly so, and I do not ever want to be able to—we are unable to run informal votes against the age of candidates. So that is very hard to answer. If this was to happen, we would do a very intensive information campaign and we would try to target that as much as possible.

MS LE COUTEUR: I have a totally different line of questioning: the 100-metre rule. There are many things to talk about, but one of the things I want to talk about is the enforceability or otherwise of this. I am obviously a member of the ACT Greens, so when I say "we" I will be talking about the ACT Greens. On election day we reported to Elections ACT dozens of violations of the rule, and to the best of my knowledge only one of these was followed up. We were told that we had to report things to Elections ACT and that the polling place officials had no responsibility for enforcing these rules. If we have a rule—be it 100 metres or whatever number of metres—how can this be enforced?

Mr Spence: I mentioned a number of inaccuracies in a number of submissions. I would state that, in my view, that is one of the inaccuracies.

MS LE COUTEUR: What was inaccurate about that?

Mr Spence: We act upon every complaint on any matter. The submission states that the line was inactive on election day, which is just not true. Our complaints officer, who is a former deputy electoral commissioner, was in constant communication with all parties about the 100-metre ban and all complaints were acted upon. In terms of the comment about polling officials not being empowered to act, they are empowered, but the enforcement process that the Electoral Commission runs is that polling area managers are tasked with that role. So they roam the ACT, the territory, and when a complaint is raised we contact the closest one to go and investigate and remove offending signs, instruct people to move back or whatever it is.

The Electoral Commission cannot directly impose a penalty, so we seek compliance in the first instance. In almost every situation that is a suitable and successful means of dealing with these issues. Our view is that almost all of the infringements reported to us are very much on the boundary of the 100 metres, so they are very close to 100 metres and—

THE CHAIR: So it appears that they are trying to meet the—

Mr Spence: They are trying to meet it or they are slightly over the boundary and a direction of "This is the boundary, please move back" is generally successful.

MS LE COUTEUR: In the federal elections, as you would be aware, if you report a problem the polling officials walk out and say whatever. They may or may not agree, but they immediately do something. Why can we not have a system like that in the

ACT?

Mr Spence: They are certainly empowered to do that; they just have many, many other things within their realm of management and we have polling area managers who are tasked with enforcing that law.

MS LE COUTEUR: I have to say that I have seen some violations which were not in any way close to 100 metres.

Mr Spence: And if one of those breaches is identified with us, we act upon it.

MS LE COUTEUR: Is the fact that 100 metres is often not something you can even see from the polling place one of the reasons that the enforcement is not as clear and easy as it is for federal elections? If it was like the federal boundary—six metres—would it be more enforceable?

Mr Spence: It is one of the reasons why the polling place manager is not directly tasked with oversight of that, in that 100 metres from where he is tasked with ensuring that voting is occurring appropriately is a large distance away, so we task our polling area managers to deal with that process. There would be potential to employ additional polling area managers. I still believe that is an appropriate management process because the OIC of a polling place has many, many responsibilities. There is room to employ more polling area managers to potentially speed up any enforcement of that rule. But, again, I contend there are not large numbers of breaches going on and, where they are, the majority of them are within 90 to 100 metres.

MR WALL: Mr Spence, there was a change between the 2012 election and the 2016 election in the interpretation of the hundred metres, from 100 metres from the entrance to the polling place—essentially the school hall's door—as it is measured federally to 100 metres from the polling place's boundary—essentially the fence on the other side of the oval, quite some distance away. In some instances that was 300 metres from the polling booth. What was the reason for the change in that interpretation of the 100 metres?

Mr Spence: It is not a change in interpretation; the act provides for that ability. So if there is a polling place that has an enclosure, the act provides for the commissioner to determine 100 metres from that enclosure. If there is no enclosure then the act provides for 100 metres from all aspects of the building. It is not just the entry; it is all aspects of the building.

MR WALL: Why, then, was there such a significant difference between the 2012 rulings and 2016?

Mr Spence: Because in no previous election had that potential in the act been applied. It is at the commissioner's discretion. My understanding is that the commissioner at the time took the route to use that clause in the Electoral Act because a previous committee had recommended that the boundary be expanded to 250 metres. In the end that was not made into—

MR WALL: It obviously was not adopted by the Assembly in a legislative change.

Given that the former commissioner is no longer in the office, what is your understanding of why he felt it was appropriate to make that decision if the Assembly failed to accept the recommendation?

Mr Spence: The act provides for it, and it is to give intent to the Hare-Clark system. The reason the 100-metre rule was brought in in the first place is that it is part of a suite that goes with the Hare-Clark electoral system, along with Robson rotation and no above-the-line party ticket voting, to provide the power and the decision-making to the elector. That is why the 100-metre ban is there, and the act provides that if there is an enclosure it can be 100 metres from that.

MS CHEYNE: I think there are some unintended consequences with that. I appreciate the way the 100-metre rule is intended to operate as you are describing, but as a candidate, throughout pre-poll and on the day we often got feedback—and my question is, did you also get feedback?—that sometimes people felt it was too far for them to get the information about the candidates so that they could make an informed decision before they went in. In some cases, such as at the Belconnen pre-poll, as you would know, the entrance to that and where people were choosing to group was around the corner and, in some cases, it was entirely impossible to see where people were. So some people felt almost disenfranchised about their ability to make an informed decision. Did you get that feedback as well or was it just levelled at us?

Mr Spence: No, we do not tend to get feedback in those terms, but I can understand that that would be a consequence of the 100-metre rule. To some degree, it is the intent of the 100-metre rule—to ensure that electors are not being provided material by political parties and candidates at the point of voting. The intent of it when it was introduced in the 90s—

THE CHAIR: I was just about to ask: do we remember when it was introduced?

Mr Spence: I think it might have been 1996, or maybe even earlier.

THE CHAIR: I thought it was a bit later than that.

Mr Spence: No, I don't think so.

MS LE COUTEUR: I remember the campaign, but–

THE CHAIR: I remember the campaign, too; I just could not remember the date.

Mr Spence: 1995.

MR WALL: What complaints, if any, did the commission receive from businesses surrounding particularly pre-poll stations, given that they are normally in commercial centres? The experience in Brindabella at the Tuggeranong pre-poll was that the hundred metres ended right outside the front of a newly opened restaurant and proved a significant point of frustration when that also was the only sheltered bit with the inclement weather that we experienced during those three weeks. It was also widely reported in the media. From the commission's perspective, how should we, as the committee looking into these matters, balance the rights of private businesses to

operate freely with the right of voters to have free and uninhibited access to polling places?

Mr Spence: In terms of the number of complaints, if I look at the table in our election report, we received 13 complaints about placement of signs in public or commercial places, which is probably about half of what we received in 2012. Canvassing within 100 metres of a polling place—I would suspect that is more to do with breaches of the 100 metres—there were 33. Do you mind repeating the question?

MR WALL: The question is: what guidance would you offer us, as the committee that is looking into these matters, as to how we should balance the rights of a business, a private entity, to operate freely without people lobbying out the front of their business with being able to run elections freely and then, likewise, giving some clean space for voters to enter, particularly pre-poll? I think that is really where the issue is, rather than on election day when the polling activity largely moves away from commercial centres and into schools and suburbs.

Mr Spence: And over a three-week period.

MR WALL: A three-week period also.

Mr Spence: I do not necessarily have a view on whether or not the length of the prohibition is appropriate. The only comment we as a commission would like to make is—and I have already made it—is that it was the intent within Hare-Clark to provide that clear access and to remove the party influence at the point of entry to a polling place. If that intent is no longer viewed as necessary by the Assembly then it is within the Assembly's remit to alter.

I can understand that during a pre-poll, because they are generally in business areas, having campaigners there is one of the effects that that has, and I can understand that that causes businesses concern.

MR WALL: How is this managed? You said a suite of measures were introduced around the Hare-Clark electoral system. How is this issue managed in Tasmania, the only other jurisdiction in Australia that shares the same system as us?

Mr Spence: Yes, they also have a 100-metre rule, except they have this funny little quirk on election day where the handing out of material is entirely banned. However, signs that were up prior to election day can remain; you cannot place any additional ones. That is my understanding of their law. They ban the handing out of material altogether is my understanding.

MS CHEYNE: What about the workability for businesses?

Mr Spence: I think they would face the same issues in that it is 100 metres. The Northern Territory just introduced the exact same ban at their most recent 2016 election. They also had a 100-metre ban for the first time in 2016.

MS CHEYNE: I have a question related to private residences. I will declare that I am talking about myself. The 100-metre exclusion zone captured my home. It did not in

2012 but it did in 2016. That caused some confusion about which law—without testing it—had greater weight: the one of trespassing versus the one of being able to display signs in my yard. I am interested in your thoughts about the operation of the 100-metre rule particularly in pre-polling places in town centres. We are seeing increased densification and so potentially more and more candidates are going to fall within that. I live on the ground floor, so my signs were easy to access, but I could have lived six storeys up and they may not have been as easy to access.

Mr Spence: Our officials are empowered to "obliterate" is the word in the act; however, in no way would we ever instruct them to go on to private property in order to do that. But we do inquire. We would knock on doors if it is within the hundred metres and inform them of that law. But in no way would we permit them to trespass. That is essentially it.

So, yes, there is an issue in enforcement. We did not tend to have any problems with that; when we asked those who were within the 100 metres to remove their signs they complied. But, yes, I could foreshadow that there would be potential issues for a breach to have occurred and a refusal to remove that because it is on private property. We did not experience any of those issues, but I believe there could be.

MS CHEYNE: So you think it could be useful if the 100-metre rule was retained to provide some clarity around that, based on how you are defining it and what is captured, whether private properties are actually captured within that?

Mr Spence: Clarity is always good.

MS CHEYNE: Information about candidates was raised with me during the campaign and since. I had people say to me, "Where is a central point for me to just get basic facts about candidates?" It was not so much name and electorate and party grouping but name, electorate, party grouping, age, occupation and the basic things they stand for. I appreciate that that may not necessarily be your role, but is there any scope within the act or do you think there should be any scope within the act to have a central place where people can at least get some basic information about all candidates rather than having to dig? Many news websites, I know, tried to do that job a little. Depending on which candidate you were seeking information about and how savvy you had already been with your own media, there was not much of a range of information that people could draw on. I was wondering what the commission's role could or should be.

Mr Spence: I would be very, very cautious of including the Electoral Commission in any form of collection of candidate biographies or policy stances or anything along those lines. That is fraught with danger for an impartial organisation. We do give the option, at nomination of all candidates, to provide us with a number of avenues for contact that we publish on our website. We have a page dedicated to information on candidates, and that is simply links to their own web page, social media, whatever it is that they choose to provide us.

I would recommend against requesting an electoral commission to be involved in the collection of biographical material. The problem with that is that you need to start ruling on the appropriateness of language or whether something is defamation, and

when you are asking an electoral commission to engage in those types of activities you are putting an electoral commission in a precarious position where the impartiality is questioned. That is never a good scenario.

I believe that a central point of information would be very, very helpful to electors. It would also provide non-party candidates and minor parties with another avenue for providing their information to the electorate, which I always believe would be a good thing for democracy. But I do not believe it is a role for the Electoral Commission.

MR WALL: Mr Spence, there was extensive discussion in estimates this year around third-party campaigns. I turn to that issue of the guidelines that the commission applies as to whether a third-party campaign is linked to another and whether they share the cap or they are entitled to the $40,000 cap each. How is that differentiation made?

Mr Spence: The separate entities?

MR WALL: Yes. Are you simply just looking for a separate legal entity as either an individual or an ABN?

Mr Spence: In that estimates I incorrectly stated that the act did not provide guidance on that other than the definition of a third-party campaigner. That was incorrect. There is further guidance in the act. Section 198 defines an entity as an incorporated or unincorporated body or a trustee of a trust. Section 198 also defines a third-party campaigner as a person or entity that incurs $1,000 or more in electoral expenditure in the disclosure period. Section 199 of the act defines related bodies corporate as:

> … bodies corporate that are related shall be taken to be the same person.
> … related in relation to 2 bodies corporate means that one body corporate is—
>
> (a) a holding company; or
>
> (b) a subsidiary; or
>
> (c) a subsidiary of a holding company;
>
> of the other body corporate.

That is what is used in order to determine whether there is a legal separation of those entities. In the situations that were discussed in estimates, they were not. They were separate entities.

MR WALL: Do you have a fear that there is the opportunity for the expenditure cap to be circumvented by registering a series of entities for the purposes of campaigning?

Mr Spence: That is currently what the act allows for.

MR WALL: Do you think it is in the spirit of the legislation or in the spirit of electoral funding caps?

Mr Spence: There was, as we mentioned in estimates, a section that applied to

third-party campaigners that prohibited them acting in concert, which would have prohibited the scenario discussed in estimates.

MR WALL: For the benefit of this committee, by "in concert", you mean coordinating their campaign to have the same message?

Mr Spence: The act provided that any person "acts in concert with someone else if the person acts under an agreement, whether formal or informal, with the other person to campaign with the object, or principal object, of having a particular party, MLA or candidate elected". That was the definition at that point. That provision was aimed at preventing people acting in concert to avoid the application of the expenditure cap.

That clause was removed. At the time the commission considered that the provision was consistent with the purpose of preventing the possibility of undue influence or corrupt influence being exerted. It is presumed that it was removed due to a ruling by the High Court in UnionsNSW and others, being that New South Wales—this is to do with the New South Wales funding and disclosure act—deemed aggregating affiliated organisations to be invalid. It is presumed that the acting in concert clause was removed in a belief that it may also be ruled invalid if tested in court. I am not entirely sure if that was the reason that it was removed but it was removed at a similar time as those discussions were ongoing.

MR WALL: Do you have a concern, though, that it probably undermines the intention of an expenditure cap for party groupings themselves, independents and also third-party campaigners?

Mr Spence: It certainly provides for the ability to create multiple separate legal entities which, of themselves, would have a $40,000 expenditure cap.

THE CHAIR: You were talking in your original submission about lifting the spending cap for third-party campaigners to comply with the federal constitution. Can you expand on that for the committee?

Mr Spence: Yes. This is a recommendation that the Assembly look into whether a $40,000 expenditure cap for non-party candidates and also third-party campaigners could be ruled by the High Court, similar to some of the recent ones, as impermissibly burdening the freedom of political speech. It is merely a recommendation. It is highlighting a risk that it could be.

THE CHAIR: You also mentioned in your original submission—and this is a bit nerdy of me—changing the counting formula from rounding down to a whole number to rounding down to six decimal places. I was wondering if you can expand on that. I am a bit of a numbers person.

Mr Spence: There is potentially, in the Hare-Clark single transferable vote system, a thing called loss by fraction. Because of the way that transfer values are calculated to a fraction, the potential is that when you multiply that transfer value against the papers that are moving across to other candidates you can lose a vote or two or, indeed, in some scenarios, increase a vote or two. And it is far more likely in elections with very few numbers of votes.

Under the Hare-Clark system, an example is the Aboriginal and Torres Strait Islander Elected Body election that we have just completed. It uses the Electoral Act as a basis and the same counting rules apply. There were very few—400-plus—ballot papers in that election. This loss by fraction is far more likely to occur there. To improve upon that you could round the transfer values to six, eight, 10 decimals and that would minimise the potential for that to happen.

Now that we have electronic systems for these counting processes, it is just a programmatic process that you could use and it could fix these problems. With some of these problems, it is arguable that they are problems. All electoral systems are a means of converting voting preferences to a representative body. It is always a balance between mathematics and a system that is easy to understand and explain. You have got to be able to have those two things working. If it is too complicated you can potentially lose the confidence of the electorate because they do not understand how it works.

MR WALL: Are you saying most Canberrans struggle to understand how Hare-Clark works?

Mr Spence: There is no perfect electoral system. There are always going to be compromises made. And it is that balance that must be reached. This particular one would just be a programmatic change to our counting system, and particularly for the smaller elections it would assist.

THE CHAIR: So it would be mainly for smaller elections?

Mr Spence: It assists in all. If there is loss by fractions and you can minimise that, then that is a benefit.

THE CHAIR: Sorry, we are going to keep harping on this today—the Tasmanian model for Hare-Clark.

Mr Spence: I do not know the answer to that. I do not know. I suspect they probably also have the same rules as we do. Ours was based very firmly on the Tasmanian one. I suspect—but cannot be quoted on this—that their rules would use fractions as ours currently do.

MR WALL: Would applying the change from a fractional distribution to a six, eight, 10-decimal place calculation have ever changed the outcome of an election in the last few elections—either with us or the elected body as an example?

Mr Spence: Again, I cannot answer that. I would have to run the numbers. It is unlikely to. The numbers of votes that are affected by this are extremely small. There is the opportunity for it to affect the exclusion order of candidates and things like that.

MR WALL: Which, in turn, would possibly influence—

Mr Spence: It is possible. Whether it has occurred, I cannot say.

MR WALL: In the Electoral Commission's report on last year's Assembly election you have recommended six decimal places. Why six, as opposed to, if it is electronic, even going further out to 20?

Mr Spence: Really, for a practical reason. The longer your decimals, the bigger your scrutiny sheet and it starts not fitting on pages properly. It is a number. It could be six; it could be eight; it could be 10. It is about minimising the effect. Six would minimise the effect. Eight would minimise it probably to a greater degree, but you start having large columns. But, in effect, six would achieve the result. It could be argued that eight would achieve the result slightly better. It would do what we need it to do.

MR WALL: Varying stages of imperfection, I guess.

Mr Spence: Yes.

MR MILLIGAN: Mr Spence, the commission maintains its view against legislating for truth in political advertising due to concerns of enforceability and perception. Can you elaborate a little more on your concerns about truth in political advertising being exploited during the political process?

Mr Spence: Yes. I have serious concerns about how it would affect an electoral commission if the electoral commission was charged with being the arbiter of truth. I think that is a very dangerous place to go. Assessing any political statement inevitably requires complex and often subjective determinations. If there was truth in advertising and the Electoral Commissioner was the arbiter of that during an election campaign, there would be a number of ways that you could, depending on how the act was written, enforce those rules.

If it was to be enforced, if it was to say that after the fact of the election there could be penalties, sanctions, upon anyone who was to breach that, there would be the potential for a party to risk that in order to gain political advantage through untrue material and, therefore, it has not solved the issue—the intent of the act. There is also potential, if that is also to be the case, that the Court of Disputed Elections could be engaged to make a determination on whether the breach had a material effect, and that would increase uncertainty following the result of the election.

The other alternative for enforcement would be—and the act currently provides for this—injunctions. If an injunction was to be the way of dealing with this, it would open up the possibilities—and this, I believe, was a comment made by the South Australian Electoral Commissioner at the time about what their rule has provided for—for political opponents to use these rules to cause an injunction on a piece of advertising material during the election period when the harm is potentially being done and using that to their advantage politically. That is a risk.

MR MILLIGAN: I could see that would be a huge potential risk. But any materials that go out are authorised anyway by an individual or by a party. Of course, regarding the information that is in that material, it is up to the individual who is viewing it to determine whether or not they think it is factual or accurate or whatnot. To have to go down a line of proving whether it is or not, I can see, would be a very difficult task, particularly for the commission to enforce. My main concern was the potential for

candidates to use that process to delay political campaigns. Obviously that has been a concern in South Australia. It is good to see that sort of evidence there.

MS LE COUTEUR: You talked about the commission being the organisation that would be doing this. But we have now over the last few years had quite a lot of experience of different organisations doing a fact-checking role. Every week after *Q&A* they will have fact checkers. We are also all well aware, particularly from the last American election, of the rise of fake news. I am not saying anything like that has happened in the ACT. I am not trying to go there at all. But clearly this is something that is happening in politics. Yes, there is a risk of injunctions, but there is also an appreciable risk of people reading something which is simply not true. Would you think that something around truth in political advertising could be more practicable if it were—we have an abundance of higher education in the ACT—outsourced to people whose full-time job is doing research?

Mr Spence: Are you talking about whether the enforcement could be outsourced?

MS LE COUTEUR: The determination of the truth—enforcement is a separate issue. You obviously could not put that out to a university or something. But I would have thought that fact checking has been put out to these organisations. I think the ABC, in fact, has a fact-checking unit.

MS CHEYNE: I think it has been de-funded.

MS LE COUTEUR: I think it got re-funded. It did get de-funded but I think it got re-funded because there was such a clamour of people saying, "We want to have some idea what actually is the truth." My point is that the determination of the truth or otherwise would not have to be done by the commission; you could merely be the administrative arm and you could outsource this to people whose job it is to do research. I agree there are some potential issues but there are also significant potential issues from people being told things which are not true, when it is not clear to them that they are not true.

Mr Spence: I think the danger of including an electoral commission in any form of this is the risk that it puts upon the impartiality and the integrity that an electoral commission must trade under. If another organisation was requested to determine the subjective nature of truth—which is often what needs to be done: what might be true to someone may not be to another—and we were trusting the impartial nature of that organisation to provide us with advice in order to seek an injunction, it would be fraught with danger for a commission.

MS CHEYNE: Could it also result potentially in a significant burden in terms of staffing, or would you have to be seeking more resources to be able to perform that function, hypothetically?

Mr Spence: Certainly if the commission were engaged in this it would have the potential to significantly increase a workload, particularly on the commissioner, because in something of this matter, particularly injunctions, it would be a commissioner determination. My view is that the commissioner has many other things that they must focus on at that point, and this has the potential to significantly increase

that workload.

MS LE COUTEUR: Can you think of any other practical way of trying to increase the truthfulness of the ACT's political advertising? Without wanting to have an argy-bargy as to what people may or may not have felt was fair advertising, I think there would probably be a reasonable degree of agreement that some of the things said by some people in the elections were arguably untrue and specifically designed to mislead voters. They were not just random; they had a specific desire behind them.

Mr Spence: I mentioned in my submission that if this was the desire of the Assembly then potentially an organisation such as the integrity commission that is currently being discussed may be an avenue for providing that. It is a suggestion. But, as I have mentioned, I would be very hesitant to include a commission involvement.

MS LE COUTEUR: I would like to talk about disclosure, particularly donations disclosure, which currently for the ACT is basically after the event. What issues do you see in terms of more timely disclosure of donations?

Mr Spence: I would argue that the ACT already has what is commonly referred to as real-time reporting. In an election year—these are all to do with the $1,000 threshold; I will not keep going over that—between 1 April and 30 June any donation over the threshold has seven days to be disclosed. That is 7 July. In an election year, after 30 June to the end of polling day they have seven days to declare it. In a non-election year they have 30 days after the end of a quarter.

I have figures here just to provide some information. At the most recent election, in that seven-day reporting period there were 611 separate gifts totalling $1,770,000. To provide a bit of a comparison, I have divided that by day. That is $16,500 per day. In the April to 30 June time threshold—seven days after the end of the quarter, 7 July—there were 247 separate gifts totalling $854,000. Then in 2015 there were 74 gifts totalling $61,000.

With the real-time reporting aspect of that, you can see that the volume of donations that is being provided really comes in that seven-day reporting period. In the other reporting periods it tapers off in terms of quantity. What it provides for is that prior to an election, in that real peak period of donations, the candidates and parties have seven days to report on their reporting period. That really captures the bulk of the time.

MS LE COUTEUR: Do you think we could do better in that last seven days—maybe get reporting up until a couple of days before the election?

Mr Spence: The act could certainly be amended to allow for that. We publish this material within 24 hours of having received it, often earlier than that. So if the act was amended to ensure that donations received within seven days of election day needed to be disclosed to the Electoral Commission before election day or within a particular time, you could compress that and—in terms of practicality for us—we could publish that. What that would do for political parties and non-party candidates in terms of workload—the practicality of that—is a different matter. But we could do it.

MS LE COUTEUR: If the Assembly were to put a cap on donation amounts it would

be, from your point of view, quite doable? It is an issue of whether it is doable for the parties and candidates?

Mr Spence: Capping what?

MS LE COUTEUR: Currently there is disclosure after $1,000, but there could be a cap, an amount that you cannot donate more than.

Mr Spence: Yes, and that has been in effect previously. There were caps.

MS LE COUTEUR: You would not have a problem with that administratively?

Mr Spence: We could administer that.

MS LE COUTEUR: You would basically be relying on the parties to do the work?

Mr Spence: And we would, as we currently do, compliance check that against the disclosure scheme. The compliance is an after the fact issue.

MS LE COUTEUR: I imagine you would not think it would be possible to do it anything other than after.

Mr Spence: No, we would not have the resources. Like I said, there were 611 separate gifts in that seven-day reporting period. To ensure that individual donors in real time were not breaching that cap would be very resource heavy.

MS LE COUTEUR: I assume that there would be no issues for you also if parties were allowed to have alternative reporting agents, not just the principal one, so that if someone is unexpectedly—

Mr Spence: The commission would have no problems with an amendment to the act that would provide for—

MS LE COUTEUR: If they are in a car accident, it is not high on their list of priorities.

Mr Spence: There is currently provision in the act for a deputy registered officer, which really just provides for the ability to nominate candidates at an election. But in a similar way you could have, for want of a better term, a deputy reporting agent.

MS CHEYNE: It would be remiss of me not to ask about corflutes.

THE CHAIR: I am quite surprised we have got this far into the session.

MS CHEYNE: That is right. Perhaps my colleagues will have some supplementaries as well. Mr Spence, I note from your report, rather than your submission, that we had a decrease from 2012 to 2016 in the number of formal complaints. But of course we are all aware of the commentary across media and in some letters to the editor. Some of the submissions we have received have talked about limiting the number of signs per candidate or per party, and I note that you say you think that would be a bad idea.

Are you able to talk us through why?

Mr Spence: In terms of whether there is an amendment or legislation guiding the proliferation of corflutes, the only comment the commission really has is that—even if it is not us; if it falls to the city rangers for enforcement—it has to be enforceable. There has to be a means to do that. I would suggest that a limit on numbers is just not enforceable. It is not practical. How is a commission going to know if there are 100 out in a particular location? It would be very difficult to enforce. That is the comment that the commission would make.

MS CHEYNE: Speaking of enforceability, the Assembly is aware that, while complaints were referred to rangers, rangers' powers in some cases were limited under the current act that they are working under. Is the commission's view, to the extent that you can offer one, that amending the public unleased land movable signs act would be sensible in terms of giving TCCS rangers greater powers for the removal of signs?

Mr Spence: It is just not a matter that falls within our jurisdiction. When we receive a complaint about a particular thing, we just pass that on to the city rangers. The difficulty they have, I am unaware of. It is not a jurisdiction that we enforce. So I am really unable to comment on the benefit of law change for the city rangers.

MS CHEYNE: But you do comment on a suggestion about restricting where the signs could be placed—that it would not be on suburban roads but, rather, on arterial roads.

Mr Spence: Mainly because, in terms of enforceability, that is more practicable. Whether the intent of the Assembly is to restrict that is entirely up to the Assembly. As I said, the comment that the commission would make is that any alteration to the rules needs to be practically enforceable, and that is one way that that may be achieved.

MS CHEYNE: While being more enforceable, it would also go to why we are looking at it in the first place, which is people's complaints about proliferation. Arguably some of the areas where there were the most signs were on arterial roads. I recall seeing an image of—I believe it was the opposition leader at the time who had very impressively staged this—something like 50 signs in a row along an arterial road. Perhaps you cannot offer a comment on this, but I wonder whether just restricting it to arterial roads, while more enforceable, would necessarily reduce people's concerns or issues about it or whether we would just see 1,000 signs more bundled together on major arterial roads.

Mr Spence: It is difficult to comment on whether that would solve the public's concerns on the issue.

MS CHEYNE: Yes. It is more enforceable but perhaps—okay.

MR WALL: Mr Spence, I turn to the dispute that was lodged after the 2016 election and the nature of it. Without going into too many of the specifics relating to the case, my understanding of it is that it related to a dispute about a candidate's nomination

being deemed ineligible by the then commissioner. Is that an issue that arises with the very, very short time frame? Would there have been an opportunity to have addressed that issue prior to the election if the time frame between the closing of nominations, the declaration of candidates and the drawing of ballot paper orders had a bigger time gap between the two? The time frame, I understand, for the 2016 election was: on 21 September nominations for candidates closed at midday and then the following day, which was 22 September, the nominations were declared and the ballot orders were drawn. If a decision is made on the 21st essentially to say this nomination is ineligible, there is very little opportunity for redress prior to the ballot papers being drawn and the election process being locked in.

Mr Spence: In that particular case the issue was really due to the timing in which the nomination form was lodged—half an hour prior to the close of nominations. And the issue was with the number of candidates eligible to nominate. There were not enough. If the nomination form were lodged earlier than that, there would have been the opportunity to seek further nominations. The process of a Court of Disputed Elections scenario is a very standard electoral process for disputing an election. It is aimed at not interfering with the process of an election, not making any of those determinations which may hold up the running of an election, and dealing with any disputes after the election and handing that to the Court of Disputed Elections. That is a very standard process in Australian elections across jurisdictions.

MR WALL: What was the outcome of the dispute?

Mr Spence: The applicant requested to withdraw his application.

MR WALL: Was any reason given why that application was withdrawn?

Mr Spence: The court simply provided him with the availability to do so.

MR WALL: Who bears the cost of taking a grievance through this process to the Court of Disputed Elections?

Mr Spence: As with many court procedures, that is often at the discretion of the court. In this particular instance there was agreement between the territory and the applicant to cover their own costs.

MR WALL: Each party would cover their own costs?

Mr Spence: Correct.

THE CHAIR: Mr Spence, I note in your initial submission to the committee you talk about electronic voting and investigating an international rollout of electronic voting.

Mr Spence: To provide for overseas, is it?

THE CHAIR: Yes, that was one part of it.

Mr Spence: Sorry, you are referring to a recommendation in our report?

THE CHAIR: No, it was in the first submission that you put to this committee about electronic voting. In the estimates hearing you also discussed looking at ways in which electronic voting can assist people overseas. But I want to pick up another few points on that matter.

Mr Spence: It is quite clear across jurisdictions that postal voting is not meeting the requirements of long distance overseas voting and the commission has undertaken to review the potential for some form of electronic voting to assist overseas electors returning their votes in time to be admitted to the count.

THE CHAIR: We were lucky enough to come together as a committee earlier in the year and have a look at our current electronic voting system in operation, including for the vision impaired. I note that in submissions we received from Blind Citizens Australia and from Vision Australia they seem to think that the electronic system here in the ACT is not as good as it could be and that the New South Wales system is better. Can you expand on that? Do you know about the New South Wales system?

Mr Spence: I do.

THE CHAIR: How does it vary? Can you give us some insights?

Mr Spence: I can. There are also a number of inaccuracies in some of those submissions that I would like to address. There was a comment about the blind and vision impaired terminal being in full view of the queue. That is not the case. We take great pains to ensure that the blind and vision impaired terminals are facing against a wall to provide for secret voting for those electors. That was one of their concerns. As part of that review into potential options for overseas electors, I would like also to investigate the potential for a telephone voting system that may assist overseas voting, but it would also provide another option for blind and vision impaired assisted voting.

In terms of the New South Wales voting system, the commission is very cautious about online transactional database voting as it currently stands. Recent developments have shown that there are risks of technical failure to those and attacks by malicious people. We are very cautious about that and we would not recommend for implementation any form of internet voting until the risks have been fully addressed.

We do note that there is an increasing call for internet voting in the community and that other jurisdictions delving into this may well increase that. The New South Wales Electoral Commission is also very aware of this. It is the view of the Electoral Council of Australia and New Zealand, which I am currently a member of, and New South Wales, that no one commission can currently maintain the processes, infrastructure, security, hardware and software to maintain internet voting long term.

On that basis, members of ECANZ met recently in a collaborative way to discuss the future of internet voting in Australia. At a meeting we have agreed to work towards the long-term aim of collaborating for the creation of a national system. The benefit of that is that all the commissions with a system that is owned and controlled by ECANZ, the council, can hopefully develop a system that is failure critical.

The risk of online voting is that the scope for malicious attack and the scope for the

overturning of an election are vastly increased because of the digital nature of it. So you have to provide assurances that cannot happen, and that is a very difficult thing to be doing and needs a lot of resources.

The commissions are of the view that in order to do that it has to be a national system, and we have, as commissioners, written to all first ministers and the Prime Minister and COAG to attempt to get this matter on the COAG agenda to further discuss the potential for this. We are very cautious about internet voting but see that it may well be inevitable. But if we are going down that path, it has to be taken very cautiously and very systematically.

THE CHAIR: Can you give us a bit more information about what differs between our blind and vision impaired voting system and the New South Wales system? Do they do it online?

Mr Spence: They do have online voting, yes. I also believe they have—it is my understanding—two forms of telephone voting, one that is entirely electronic and one that directs people to a call centre in case they are unable to use the fully electronic version. That is my understanding. Our version in the ACT is entirely what is commonly known as kiosk voting. It is within the polling place and it is not connected to the internet in any way. So the protections against external, malicious attack are greatly minimised.

As you probably would be quite well aware, at the last election we got one in three voters voting electronically. We make terminals available in each of the pre-poll voting centres. The Auditor-General has recommended that further strategy for increasing electronic voting be created by the commission. To do that currently we would need to increase our number of pre-poll votes. That is probably the most likely way of doing that.

Currently my office is engaged in a review of electronic voting in the ACT and within the scope of that is an investigation into potential hardware and infrastructure scenarios that may provide for a simpler means of rollout. Currently, cost and complication in rollout are what is prohibiting an increase in rollout, mainly for polling day polling places. We are looking at modern technology that may be able to be used to make that easier. If it is easier, then we can roll out the electronic voting in other scenarios.

MS CHEYNE: When people come to the pre-poll and you say, "Are you going to be away on election day?" does that have any impact, do you think, and a limit on the number of people, or do you find most people just say yes. There is no standard of proof.

Mr Spence: Exactly. There is a requirement that, to cast a pre-poll, they must not be able to make a polling place on polling day. It is very difficult to enforce. What constitutes not able to make a polling place on polling day? Is it because they are at sport, or are they going down the coast?

MS CHEYNE: So is it a bit silly to even ask?

MR WALL: Do not want to.

MS CHEYNE: "I'm too busy campaigning." I know candidates who were very close to polling places but pre-polled and seemingly they were asked the question and said, "No, I cannot make it on the day." Is it really asking people maybe to lie? I do not know if you keep statistics of people who say they are going to be away and they are like, "No, I'll be here," and then you go, "Oh, what do I do now?"

Mr Spence: On occasion that does happen.

MS CHEYNE: Then what happens? Do you say, "You've got to vote on the day"?

Mr Spence: If they state that they are unable to—

MS CHEYNE: Can they change their mind in front of you? "Oh, no, wait; I just remembered."

Mr Spence: If they state that they are unable to make a polling place on polling day, then they are permitted to vote.

MS CHEYNE: It just seems like it is—

MR WALL: It is an honesty system.

MS CHEYNE: Yes, it is a bit of a weird step when there is no standard of proof.

MS LE COUTEUR: The federal people, I think, ask slightly different questions, which are a bit more conducive to the idea that you have to vote on voting day. I am trying to remember what they are.

Mr Spence: I am not sure about that. Federally they have to ask three questions in terms of—

MS LE COUTEUR: Yes, that is what I mean. They ask different ones.

Mr Spence: There is no requirement to ask those. The questions that they must ask are: have you voted before in this election? I cannot remember the other ones. What are they now?

MS LE COUTEUR: But they do, I think, make it clearer that you really have to have a reason to vote pre-poll. Do you think there would be any issues if we lined up with the feds on this one?

Mr Spence: I am not sure that is true. I would have to look at it, whether they are more specific in the questions on not being able to pre-poll. I would have to look into that. I just do not know.

MR WALL: Were the electronic electoral rolls used for marking off names at all polling stations or just for pre-poll and select?

Mr Spence: All polling stations, and that has been the case for the last three elections. We are the only jurisdiction in the country that does that, primarily because we are so much smaller.

MR WALL: And does it create any issues of someone with perhaps the same name being marked off incorrectly or all those sorts of things?

Mr Spence: It certainly has the benefit of restricting the potential for multiple voting because when you are marked off in Kambah, within what could be considered real time—before someone else can get to another polling place really—it would be marked off on every unit across the ACT.

MR WALL: And how many instances for the last year's election were there of someone claiming to have wrongfully been marked off on the electoral roll?

Mr Spence: That is not uncommon, that there is polling official error that they have marked the wrong person on the roll. It was drastically reduced at this election. That is a particular kind of declaration vote. Your name is already marked off, you have to do a declaration vote. The vast majority of those are polling official error, and you can determine those because of the non-voter. You are able to match the already marked as having voted against a non-voter name that is a very similar name or just above them on the list or those kinds of things. It definitely happens, but they just do a declaration vote, and when it is determined that it was a polling official error, that vote is submitted to the count.

THE CHAIR: On that note and given the time, thank you very much for your time today, Mr Spence. This is a very important subject and we have a lot of questions and a lot more witnesses to hear from. If the committee has more questions for you, we may recall you.

Mr Spence: That is no problem.

THE CHAIR: Excellent. On that note, we shall adjourn for morning tea.

Hearing suspended from 10.34 to 10.52 am.

BYRNE, MR MATTHEW, ACT Branch Secretary, ACT Labor and ACT Young Labor

THE CHAIR: Welcome back to today's hearings. We welcome Mr Matthew Byrne, Secretary of the ACT Labor Party. Mr Byrne, could you note the pink privilege statement there? Could you please let us know that you are happy with that?

Mr Byrne: Yes.

THE CHAIR: Before we proceed, I have one question that has already been answered but I am asking it of all witnesses in this inquiry. Are you affiliated with any particular political party and, if so, which one?

Mr Byrne: Just one—the ACT branch of the Labor Party.

THE CHAIR: Thank you, Mr Byrne. Would you like to make an opening statement?

Mr Byrne: Yes, just briefly. Thank you for the opportunity to make a submission to this inquiry. The ACT Labor Party takes very seriously the rules, legislation, processes and conduct of elections here in the ACT. We believe that we have a very fair, transparent and open system. We support the Hare-Clark system, warts and all, and all the difficulties that come with that as a political party that seeks to govern on behalf of all Canberrans instead of just pursuing any single interest. We believe that the election was conducted very professionally and very well by the Electoral Commission. They have a fantastic record of running elections here in the ACT and we continue to support the work of that organisation.

We believe that the ACT has one of the strongest regimes when it comes to transparency and accountability for political parties and candidates in terms of fundraising, donations and the conduct of elections. We defend those laws very strongly. We think that is healthy for our little democracy here in the ACT to have those rules in place, balanced with a strong public funding model. There are a lot of responsibilities on political parties here in the ACT to provide a lot of information in a timely fashion to the Electoral Commission for public consumption. That is why we strongly support maintaining administrative funding to political parties.

We also strongly support the cap in expenditure. I think the last two elections have been fought under that model and it has shown that there is plenty of room for different voices in the community to be heard during our elections while also ensuring that there are no arms races in spending. You do not get the kind of federal election campaigns that we have seen in the past from the mining industry and the like, but there is enough room, I think, for community voices to be heard under our system.

It also ensures that independents, minor parties and micro parties can get a say as well in our election campaign. As you will note from our submission, very few, if any, independent or micro party candidates were able to expend the $40,000 cap. So we would recommend that that remain in place, along with indexation as per the current legislation. Again, thank you for the opportunity. I look forward to answering any questions as best I can.

MR MILLIGAN: Mr Byrne, I would like to get a clarification from you in relation to banning developers from making donations to political parties. Can you clarify where your position is on that and what constitutes a "developer" in particular?

Mr Byrne: We have changed our party's rules to ban property developers from donating to our party or candidates. We have based our view on the New South Wales legislation that we have referred to in our submission. It is our view in relation to entities or individuals whose primary focus as an organisation is in property development. We do not believe that it is necessary to ban. We do not believe that a property developer is someone who is a home owner, who owns a bit of land and who builds something on that. We do not believe such a person is a property developer. The same goes for organisations.

However, if you are really involved in development applications or in development, then we believe you should not be contributing any more to political parties. We have taken that step ourselves already. I understand that the Greens do not accept such donations, either. We believe it is time for the territory as a whole to make that effort.

Our view is basically that whilst we do not believe there are any incidents of any impropriety from the development industry in the ACT, we believe that community expectations have changed. The majority of the community would like to ensure that when developers and government engage for the purposes of transacting a contract or a business there can be no perception of undue influence because a company may have once donated to a political party.

I think that should cover all parties—obviously the Liberal Party or the Labor Party as the two main parties in the territory, and the Greens as well—in terms of who can form government. I think government has a responsibility to get about and do its job. I think private enterprise and predominantly the development industry have a right to be able to conduct their affairs without the perception that somehow, because they have engaged in the political process in the past, there is something going wrong there. We think it is actually in the best interests of everyone that that just be removed.

MR MILLIGAN: Is your concern about MLAs and government being unable to make a decision that is based on the best interests of the community if, for instance, a developer has donated or given money to that political party or that MLA? Do you fear that the MLAs are unable to put that aside and make a decision based on the best interests of the community?

Mr Byrne: No, not at all. I think our MLAs are conducting themselves with the greatest ethics and with integrity. That probably applies across the chamber I would say from my experience, though it has been some time since the Canberra Liberals were in government. I think it was good to see Alastair come out yesterday and be upfront about his family connections, as deep as they are, to Colliers International. But I think that is actually quite a good example of why we should do this.

We are a city of 400,000 people. We are still a relatively small jurisdiction. People are going to come across each other's lives in very different ways. Then when government needs to make a decision, it needs to be as above board as possible when

it comes to that. The development sector is one where I think the community has certainly moved on in that respect. I do not question the integrity of our members.

MR MILLIGAN: From my understanding, the Labor Club here is looking at developing accommodation, apartments or something or other. Is that correct?

Mr Byrne: That is a question for the Labor Club. I am not involved in the Labor Club's affairs or their governance.

MR MILLIGAN: So you could not give an opinion on whether or not you would think that if the Labor Club were deciding to build 20, 30 apartments it may constitute them being a developer?

Mr Byrne: I would not believe so. The main aim of the club is to provide a service for their members. If they have a piece of land, like I said, with the example I gave earlier, and they want to diversify their income by building something like that, then whilst I am not a constitutional expert or a legal expert, I do not think that would constitute being a property developer. If they entered a partnership with someone and they were a property developer and that was their business, then that organisation certainly would not be.

MR MILLIGAN: You made reference to multiple developments. Is it just because it is a one-off development that that does not constitute one?

Mr Byrne: I think we go back to the New South Wales legislation. I think their legislation refers to regular development applications or engagement in those things. I think it is pretty clear that their legislation stands up. They are currently having a review. I believe the Electoral Commission is referenced in their submission. I think it would be worth everyone waiting for that review to come out. We should always be informed by what is happening in that jurisdiction because that is where the legislation is in place and is working. I think we should see where they go with that.

MR MILLIGAN: One last question: how does building these apartments benefit the members of the Labor Club?

Mr Byrne: Like I said, that is a question for the Labor Club.

MS LE COUTEUR: I want to talk to you about your suggestion, which I believe is called a complementary funding scheme.

Mr Byrne: That is right.

MS LE COUTEUR: Can you talk to us a bit more about how that would work? How would that work with the existing public funding scheme or would you be intending that there would be changes to that as well?

Mr Byrne: Whilst we have a very strong public funding model in terms of dollars for votes and administrative funding and we have quite good rules in terms of transparency of when you have to report donations to the public and to the commission, we think that if we are going to exist in a proportional representation

system we need to have a model where candidates and smaller parties, or even larger parties if they can do the resources, can try to fundraise more than they can from small dollar donors. It is a way of trying to encourage parties not to be reliant on corporate or large donors.

The model that we have referenced here is the New York City Campaign Finance Board, which has a matching funds program that says that if you can fundraise so much of your cap—in our case, a percentage of your cap—then that would be matched with public funding. We believe that that would be an interesting thing to explore. We do not have a firm view on what a model should look like. I do not think there is a comparable model in existence here in Australia. But certainly I think it is something that we in the ACT, as a jurisdiction that has significant results in the reform of our electoral system, should look at.

I have basically put down a bit of an explanation of the New York scheme. Again, we do not have a hard and fast view beyond what a model would look like, but we certainly think it is worth this committee exploring that. I think there have been inquiries in the past on whether 16 and 17-year-olds can vote, and here it is again. So the issue is still bubbling away. I think this could be one of those issues where this committee may look at it now for the first time. You may not come back with a solid model to recommend to the Assembly. But I think it certainly needs to be in the mix if we are going to continue looking at an electoral system that is, as far as possible, not reliant on large private sector donations being the basis of our model.

MS LE COUTEUR: Would you see at the same time that the existing public funding would be reduced? The $8 per vote—the Greens did not vote for it because we thought it was excessive. I would assume that there would have to be adjustments, not just additions.

Mr Byrne: It would depend on what the model is that is recommended by the committee. We fully support the $8 per vote model as it stands. It looks like a lot when you only count one house. In a lot of jurisdictions the public funding model is votes for lower house votes and votes for upper house votes. That can take the vote up to very close to where we are, if not further.

I think we actually hit the right balance when it comes to dollar per vote public funding for parties. I think that the level at which a party or a candidate can qualify for those votes is also quite fair. There were some independents who polled relatively well and were able to get that funding. I understand that some donated to charity, but some of them can actually use that if they wish to continue to campaign in the future. I think it would depend on the model. I do not have a firm answer on that one.

THE CHAIR: While we are on the subject of donations, Mr Byrne, I was wondering if you could elaborate on real-time reporting. The commissioner was in earlier this morning and he had a view about that. Can you just tell me where you sit on real-time reporting?

Mr Byrne: We support a move to real-time reporting as near as possible. We support a move to seven-day reporting for all donations to be declared within seven days if they reach the $1,000 public declaration threshold. But we believe that it has to come

with an investment of resources into the Electoral Commission to be able to provide parties with the tools with which to be able to do that. I would not want to put words in the mouths of the Liberal Party or the Greens, but if we are going to move to a model like this, while we can direct resources towards it, in the cut and thrust of the final weeks of an election campaign, if it is going to be the model that is going to exist throughout the entire term, then we really need to explore the tools that are available in other jurisdictions that have real-time reporting, such as Queensland.

The Queensland Electoral Commission have launched what I think is an excellent website which allows parties to upload information for donations that they have received, and it is the Electoral Commission then that works out whether those donors have reached the $1,000 limit and then publish as it goes. At the moment all the work is done at the party secretariat level and then we get audited to see if we have done it right or not.

While I support the move to real-time reporting, there need to be some tools and resources in place for us to be able to adapt to that. I think it is in the public interest to be clear on this stuff, but I think that if it becomes a trap for parties to be fined because we do not have the resources to deal with it appropriately, then I do not think that that will work either.

MS LE COUTEUR: I note in that part of your submission you also talk about no longer having the exemption for events payments.

Mr Byrne: The 250, yes. The dinner, that is right.

MS LE COUTEUR: Because it seems quite logical to not have that exemption. It creates a way around things.

Mr Byrne: Well, it also creates some accounting headaches for parties as well—when does it count, when does it not count? If you apply it consistently, then you can get into trouble with the Electoral Commission as well. I think a lot of fundraising now is done through candidates asking people and then donations coming through online. The dinner-type of event, from our experience, is certainly becoming less and less of a thing. So I think it is outdated.

MR MILLIGAN: In other words, no matter what it costs for the event, if it is $50 or $250, it should be reported?

Mr Byrne: You have to report all donations anyway; it is just once it reaches the $1,000 limit that they are publicly disclosed. So, yes, that would not be any different to what we do now.

MS CHEYNE: Electoral matter: obviously I have an agenda. There was an article published a few days ago in which you were quoted as well as the Acting Electoral Commissioner and the Remuneration Tribunal chair. You also have some comments in your submission about the use of the communications allowance and how we are reporting electoral matter in differing years. Are you able to talk us through your views on that and how you think it might be solved?

Mr Byrne: That is a good question. I think Ms Le Couteur may have been the only member in the Assembly when the discretionary office allowance was in place.

MR WALL: No, I struggled through it as well.

Mr Byrne: Sorry. There was an allowance called the discretionary office allowance which was provided by the Assembly for non-executive members to access to be able to use to communicate with their electorate and their constituents. There were some pretty strict guidelines around the appropriate use of that fund. But there were some problems with it, and the problems were in who had oversight of it. I was a staffer in this building when that was in place and, from memory, you had to go to a corporate level staffer in the Assembly building to provide oversight of what was a fund administered by the Assembly. It was entirely inappropriate for that to operate the way it did.

It also was not available for executive members. We have this quirk in our system here in the ACT where, for some reason, once you become a minister there is a belief that you no longer represent your constituency. If you asked the Chief Minister, Deputy Chief Minister or any other member of cabinet, including Mr Rattenbury, I think they would strongly disagree that they do not represent constituents anymore, and I think the same would go for the Canberra Liberals. If you were successful in winning government, Mr Coe and any other member of your party who made it to the executive could no longer communicate with their electors.

It appears that a couple of years ago there was a bipartisan push to remove the DOA and move to a model that had more flexibility and allowed executive members to be able to communicate with their constituents. The Remuneration Tribunal instituted a fund to be paid to MLAs as an allowance, and that ran into some issues. It looks good on paper because it is a very simple mechanism in a way for members to be able to use those funds. The problem is there is a paragraph in the Electoral Act that says that funds provided to members by the Assembly for communication or for use to talk to their constituents are not covered by the Electoral Act.

The Electoral Commissioner wrote to all members I believe at the end of 2015 saying that in his view the allowance paid to Assembly members was no longer covered by that paragraph in the act, which meant that if you spent that money on electoral matter, which is very broad in definition, especially in an election year, it would have to be declared as capped expenditure.

The Remuneration Tribunal then made another decision to roll that into the salary of members just as pay. I think the Remuneration Tribunal chair is quoted as saying that she believed that that resolved the problem, but that is just not the case. It actually makes it harder for people to be able to administer that fund.

We took the view as a party that because our returns and the returns of members had to correlate and that there was an obligation that our members would communicate with their electors, taxpayers are giving this money to members of the Assembly to do this not as pay. If it was a pay rise, you would have hoped that the Remuneration Tribunal chair would have said it was a pay rise. If it was public funding for elections, you would have hoped that that is what she would have said. But we believe it was set

to use instead of the discretionary office allowance and for you to use to talk to your constituents regardless of if they are Labor, Liberal, Green, Sex Party or whoever. We have tried to set up a mechanism which would allow members to be able to do that on the Labor Party side whilst allowing the party and those members to be transparent and accountable and compliant with the Electoral Act.

We think there needs to be a review of this, especially as we get closer and closer to the next election in 2020. Frankly, I do not think this fund should be utilised by parties as a convenient source of public funding to fight your re-election on. This is there for you to talk to your constituents in the in-between years and should be expended as such.

We should look in a positive and collegiate way towards a way around this, whether or not it goes back to a fund that is given to members by the Assembly, but I think such a fund would have to be available to executive members and would have to be accountable. Do we make it accountable through the gifts or declarations? What is the appropriate oversight of that, I am not sure. But we certainly need to go down that path because I think we have created a system that is less accountable to the public and brings it over into the purview of political parties, which I do not think was ever the intent. We took the action we did because we want to ensure that everyone is compliant with the act.

MS CHEYNE: Do you think that the definition of "electoral matter" in the act needs to be changed?

Mr Byrne: I think it is very broad. I think that the fact that comment on the performance of any member of the Assembly counts as electoral matter is—

MS CHEYNE: Including ourselves, as we have just discussed with the Electoral Commissioner.

Mr Byrne: That is right. You cannot say, "I am happy that this footpath was fixed."

MS CHEYNE: "I lobbied the government to fix this footpath," is commenting on the government and me.

Mr Byrne: Yes, so I think it is worth reviewing that. Absolutely.

MR WALL: Mr Byrne, what do you then see as a way forward around this? Obviously there is a requirement for members to continue to fulfil their obligations as elected representatives up until election day, freely and without hindrance. Given the complexities of the communications allowance and particularly in an election year what constitutes electoral material, it would be my personal view that there is the ability for party groupings to inhibit a member of the Assembly who is not recontesting the election from carrying out their duties as an elected representative to try to preserve the expenditure cap.

Mr Byrne: Sure.

MR WALL: What does ACT Labor see as a way forward in remedying this issue?

Mr Byrne: We do not have a proposal, but I think you would have to explore a fund that was based in the Assembly as opposed to being given to you through your income through the Remuneration Tribunal. The first reason for that is because it then falls under that paragraph in the Electoral Act that says that if it is a fund given to members by the Assembly for the purposes of communicating with their electors then it is no longer covered by the definition of "electoral matter".

To back that in you would need to have some guidelines about how you would use it. I think that is pretty obvious. The DOA guidelines were very strict. I think you would have to review whether that would be as strict or how it would be utilised. One of the problems with the old guidelines was that they did not keep up with the times and did not provide much advice on use for social media and things like that as well. So I think they would have to change. And I think it would have to be available to all members of the Assembly, and that is really important. We have to recognise that, regardless of who is in government, executive members have a right to communicate to their electors as much as anyone else in the Assembly.

MR WALL: We have almost gone in the opposite direction now. Previously it was not made available to members of the executive whereas now members of the executive get essentially twice the communications allowance: they get it once in their base salary as an MLA and then the percentile increase on their salary as an office bearer.

Mr Byrne: Yes, it should be equal; it should be equitable.

MR WALL: There are additional costs to the territory now in that it attracts superannuation as well, which is probably outside the intent of the Remuneration Tribunal.

Mr Byrne: Yes, I agree with that. I think it also needs some oversight. I do not think the oversight mechanisms that were in place under the old DOA were appropriate or very effective. Assembly members should find a way of overseeing it themselves. Is there an appropriate committee that already exists that may do that? Maybe; I am not sure. That is certainly something that you could have a look at.

THE CHAIR: In the interests of time, thank you, Mr Byrne, for your evidence. *Hansard* of the hearing will be sent to you soon for any edits or corrections. The committee may have further questions. Are you happy that we provide them in writing or the possibility of a recall?

Mr Byrne: Yes, I am happy.

THE CHAIR: Thank you.

Short suspension.

MAZENGARB, MR MICHAEL, Convenor, ACT Greens
AZIZE, MS MAIY, 2016 Campaign Manager, ACT Greens

THE CHAIR: I welcome to the committee hearings members from the ACT Greens, Mr Mazengarb and Ms Azize; thank you for appearing today. I ask that you review the privilege statement on the desk and inform us that you have read that and understand and agree to what is written?

Mr Mazengarb: Yes.

Ms Azize: Yes.

THE CHAIR: I know this question may seem a little odd but we are asking this question of every witness appearing in the hearings: are you affiliated with any political party and what party might that be?

Mr Mazengarb: Yes, ACT Greens.

Ms Azize: ACT Greens.

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

Mr Mazengarb: Yes, a quick opening statement. Thank you for the opportunity to appear before the committee this morning on behalf of the ACT Greens. It is a really positive thing to be reviewing and reflecting on our electoral processes and the conduct of last year's election so soon after the fact.

You have probably had a chance to flick through our submission so I will not make a substantial opening statement rehashing what it contains, but we would like to cover off on two of the areas in particular. One is with regard to younger voters. The ACT Greens have made two recommendations in its submission about youth engagement at elections. The first is with regards to the resourcing of Elections ACT. Young people in the ACT, as is the case right around the country, are under-enrolled and, as a result, are not fully participating in elections and exercising their democratic rights. The ACT Greens have recommended that Elections ACT be funded to lead improved education on civics and citizenship matters for young people, including at schools, with a focus on young people aged between 16 and 19.

The other one, which has clearly received quite a bit of attention, is for the voting age to be lowered to 16 years. I would like to make a few points on this. One is that 16 and 17-year-olds are already entitled to enrol to vote in Australia. They can voluntarily have themselves entered on to the roll. It does not give them voting privileges yet, but that process has already been established. The ACT Greens make the point that if somebody is already on the electoral roll, they might as well be provided the opportunity to vote.

Some of the attention around this links the right to vote to someone's suitability to sit in the Assembly or to serve as a minister. That is quite an extraordinary conflation of what we said in our submission. Section 103 of the Electoral Act already provides

explicit eligibility criteria for those who can serve as a MLA and thus as a minister. It includes the specific requirement that someone be at least 18 years of age, and we are not suggesting that that necessarily be changed. Under that section there are tighter restrictions on who can serve as an MLA compared to who is entitled to vote, so there is clearly no need or a precedent for them to be congruent, because they are not at present. If you take what is a rather extreme response to our submission, you would be basically saying that unless you are suitable to sit as a minister, you should not be allowed to vote. We do not think that is the case.

As we noted in our submission, it is important to note that some of the arguments against lowering the voting age can be used to disenfranchise adults. The argument that certain groups of people lack the knowledge or the maturity to vote has been used against increasing voting rights to minority groups for years and undermine a core principle of our democracy, that is, voting is an expression of values rather than a test of knowledge or ability.

The second area I would like to touch on is donations. The ACT has historically had quite stringent restrictions on who can and cannot make political donations for the purpose of ACT elections. These restrictions were relaxed prior to the 2016 election partly in response to the High Court decision in the Unions NSW v New South Wales case, which found at that time that the restrictions on donations from unions was in contravention of the implied right of political communication under the Australian constitution.

Subsequent to that case and to the amendments to the ACT Electoral Act the High Court decided in the McCloy v New South Wales case that prohibitions on political donations from certain types of organisations—in this specific case, property developers—could be put in place without being in contravention of the implied right of political communication under the constitution.

It is interesting to reflect on the process undertaken by the High Court in determining that prohibitions on one group were unconstitutional but prohibitions on another were okay. It highlights the particular risk or the perceptions of risk of the influence of donations from particular groups such as property developers.

In light of this, the ACT Greens have made the recommendations and would support the reinstatement of strengthened donation laws, including imposing a cap of $5,000 per financial year and reinstating the restrictions on receiving donations for ACT election purposes from only persons enrolled to vote in the ACT.

I note that the ACT had previously had a $10,000 cap that was subsequently removed at the same time as the public funding rate was quadrupled to $8 per vote. The ACT Greens do not believe the lifting of restrictions on donations, whilst significantly increasing the public funding rate, meets community expectations, and it works to simply benefit larger political parties. I am joined by Maiy Azize, who was our election campaign manager last year, so we are happy to take questions.

MR WALL: Mr Mazengarb, the Greens' submission touches on pre-polling voting rules and raises some concern with the increased popularity of pre-polling and some of the difficulties that creates. Do you want to expand on that a little bit further and

some solutions that you might have that the committee should consider?

Mr Mazengarb: Maiy will touch on some.

Ms Azize: I think the solution is a really simple one, which is just better enforcement of the laws we have, which is requiring a reason and asking what that reason is. I think pre-poll has been expanded just because it makes elections easier to run for election officials, but the argument we made in our submission is that as pre-polling has gone up in the past 15 years, voter turnout has actually gone down. It is not a tool for enfranchisement, which is sometimes the argument that is made, and we do not think that it absolves governments of their responsibility to provide an efficient process on election day or to do outreach with represented groups.

MR WALL: Do you think part of the issue is the extended pre-poll period, which for an ACT election is three weeks?

Ms Azize: I am less concerned with the period and more concerned about when people turn up to pre-poll are they being ushered in or are they actually being asked, "Are you eligible for a pre-poll? What's your reason?"

Mr Mazengarb: The anecdotal experience is that people will often just be walking past a pre-poll voting booth and then they realise, "Oh, I can go in and vote now. I might as well just go do it and get it out of the way." So it has lost that purpose of being for people who are unable to vote on election day and it then undermines some of the other restrictions we have in place based around people voting on a particular day, such as media blackout laws and that sort of stuff.

THE CHAIR: We have heard from the Acting Electoral Commissioner this morning his views about enforcement of pre-polling. How do you think you might enforce that? Yes, they have to ask a question, but anyone can tell you anything and where is the evidence that that is necessarily the case?

Mr Mazengarb: I guess it is taking that extra step of asking why someone is not able to vote on election day. At the moment the question is, "Have you got a reason?" and they say yes, and that is it. That is where it ends. We are asking people to reflect on why they are unable to vote on election day when it could just be that it is inconvenient for them or it is more convenient to do it now rather than them being out of the state.

THE CHAIR: What might be some of those reasons that people would not be able to vote? For example, one year I was getting married on election day and the Electoral Commissioner decided that that was not a legitimate reason not to vote on election day. So I voted in my wedding dress on the way to my wedding and had a blast. But it comes down to what is a legitimate reason.

Mr Mazengarb: That is up to the Assembly to decide on those reasons. But obvious ones would be that if you are not physically present in the ACT on election day or you are going to be overseas then you are not physically able to get to a polling booth. They would be legitimate reasons.

THE CHAIR: You briefly touched on donations. I note in your submission you are talking about a $5,000 donation cap from ACT entities. I am assuming you mean both residents and businesses?

Mr Mazengarb: That would be in conjunction with restoring the donation restriction to people who are enrolled to vote in the ACT. That is the provision that existed prior to the 2016 election: you had to be enrolled to vote in the ACT to be able to donate towards ACT election campaigns. It does not touch on federal elections at all.

It would be a restoration of that and effectively a restoration of the cap that existed as well but a reduction in that cap from $10,000 to $5,000. We think that would be justified because that would be done in the context of the public funding rate being increased to $8 per primary vote.

THE CHAIR: So it would be a cap of $5,000 per person?

Mr Mazengarb: Yes.

THE CHAIR: And/or per business? If a person was a person as well as a business owner, would they have one cap of $5,000?

Mr Mazengarb: It would not be able to come from a business because—

THE CHAIR: It would not be able to come from the business sector at all?

Mr Mazengarb: If the restriction is that they need to be enrolled to vote, a business is not going to be enrolled to vote in the ACT, only individuals.

THE CHAIR: So there would be no donations from anyone except—

Mr Mazengarb: Individuals.

MR MILLIGAN: Would that apply to donations from someone coming from interstate or coming here to attend an event and purchase at an auction? They cannot do it?

Mr Mazengarb: Yes. To provide some background, I was party treasurer in a previous capacity. Prior to the 2016 election or prior to when the act was amended ACT political parties were required to maintain separate bank accounts: you had an ACT election bank account and you had a federal election bank account. Essentially what you would do when you received donations is that you would do a check against the electoral roll and you would say, "This donation has come from this person. Is this person enrolled to vote in the ACT?" If yes, you would put that money in your ACT election account and you would be able to spend that money on ACT election campaigning. If not, that money could go into your federal pot and you would be able to spend that on federal election campaigns, But by sticking it in a separate bank account you were providing that degree of separation in funds. Any donations that would come from someone enrolled to vote interstate or from an organisation or a business would be used towards federal election campaigns and not spent on ACT campaigns.

THE CHAIR: How would that interact with real-time reporting? We have heard from a couple of witnesses this morning about real-time reporting.

Mr Mazengarb: You would still make the same donation reporting as you do currently. As was the previous practice, you would indicate when you disclosed those donations to Elections ACT essentially which pot that donation would go into. So you would say, "I received this donation from this person. This is being counted towards my ACT election campaign donations," or "It's gone into our party's federal bank account."

MR MILLIGAN: My question is in relation to the corflute situation. It has been reported that there were fewer formal complaints about corflutes in the election just gone, compared to 2012. In your submission you are calling for an outright ban on corflutes. Can you justify that and also explain how, let us say, an independent candidate or a candidate who is not from one of the major parties can use material out in the electorate to get face recognition and name recognition? We know that that is one of the contributing factors that helps someone get elected. What would they be required to do if they were unable to have corflutes on the side of the road?

Mr Mazengarb: Our submission—I think it is the position that the ACT Greens have—has really been informed by the community response. I note that the number of formal complaints was lower at the 2016 election compared to the 2012 election. But I think the community response to the use of corflutes in the ACT has been pretty clear. People have been pretty much against the number and the proliferation of corflutes during election periods. People have said they have found them to be quite confronting. The fact that they become a target for vandalism or are often destroyed means that they end up becoming just a mess on the side of the road.

I note that under the Public Unleased Land Act there is actually a general prohibition on putting signs on the side of the road, but there are exemptions that are provided for particular uses, these being business signs, real estate signs and community signs. Schools or registered charities are able to put signs on the side of the road, but they are actually restricted to a maximum of 20 signs and they are only allowed to be up for two weeks. Political parties have been given a more generous exemption during the period of an election campaign.

I think it is a situation of balancing people's ability to communicate and campaign with community expectations of what is reasonable and what is a good form of communication. With regard to smaller parties and independents, they still will have the means to be able to go doorknocking, make phone calls or put material in letterboxes as well as having signage or corflutes on private property.

Ms Azize: I will elaborate. I do not think that corflutes are widely proliferated by independents and small parties. They are the most expensive material that you can order for a campaign. Certainly, our experience on the campaign, but also from discussions that we had with smaller parties and independents, suggested that it is a total arms race out there. Only the major parties have the capacity and the resources to keep their signs up. You are just losing money every day that you are trying to keep having corflutes out there. I think anyone who was watching the last election could

see that it was the major parties that were the ones who were engaging in the corflute war. This was not a campaign tactic that was really taken up by independents or small parties.

MR MILLIGAN: You would think, though, that reducing someone's ability to go out there and market or promote themselves as a candidate would surely go against the philosophy of the Greens party as well.

Ms Azize: I think that assumes a level playing field where signs are not being tampered with and where everyone has sort of equal access to something that is actually quite an expensive resource.

MS CHEYNE: But, equally, I think you say that having signs in yards would level the playing field. But does it really? You could have really great friends, you could be well known and you could be a really bloody hopeless politician. Or you could have no friends, probably be a really good candidate but then have no yard signs because you do not have many friends. I just do not see how that really does level the playing field.

Ms Azize: Because they are much less vulnerable to tampering. We did not get a single complaint about one of our yard signs being tampered with at this election, but we were receiving daily multiple notifications about tampering and vandalisation of our roadside signs.

MR WALL: I will give you one example: I not only lost my corflute out the front of my house; I lost my letterbox in the process. I think it is vexed both ways, probably. That would be my experience.

THE CHAIR: Ms Le Couteur, do you have a supplementary?

MS LE COUTEUR: No, I have a substantive.

THE CHAIR: Sorry, I thought you were—

MS LE COUTEUR: No, I am happy with corflutes. I do not mean it quite like that, but I do not want to talk anymore about corflutes. What I do want to talk about is truth in advertising issues. I think this is really important. I refer to the rise of fake news. I do not know how much of it has been occurring in the ACT. We discussed this earlier with the Electoral Commissioner, who was very hesitant about it and felt that it would have a couple of problems: one, it would be very subjective; two, it would just lead to an injunction war in which one party would say, "Your ad is not truthful; you've got to stop it." It would be escalating warfare. Is there any more information you can give the committee to reassure us as to the practicality of this?

Mr Mazengarb: It is an interesting one. I think South Australia is the only jurisdiction at the moment that has such provisions in place in their electoral act. I understand the hesitation from the Electoral Commissioner about enforcement. It does not necessarily need to be the Electoral Commissioner who makes those determinations, but someone who is appropriately placed to make a judgement about whether a piece of material is misleading or contains facts that are not true.

Examples have been flagged of an integrity commission or a similar body that is tasked with that role of making sure things are truthful or accurate. That might be a better body. I think part of it is: how do you undergo the enforcement of that? There are several options. Is it done effectively in real time so that people are made to pull materials out during an election campaign? Do you defer it until after the election when you have more time to consider whether a statement was truthful?

While that might not necessarily allow for an audit of material to be removed during an election campaign, the risk of that enforcement may still provide political parties or candidates with the impetus to make truthful statements. I think it is something that is worth considering and worth providing a protection for in the ACT.

Ms Azize: We can get in touch with the committee secretariat and provide the SA act and the regulations, because they provide some really good guidance about how they assess what is true but also what is misleading, which can be harder. They have some guidance on that.

MS LE COUTEUR: If it was enforced afterwards, in effect, what sorts of penalties would you be assuming? I assume you are not thinking about going back and recontesting the election?

Mr Mazengarb: No.

MS LE COUTEUR: I assume you are thinking about money?

Mr Mazengarb: Yes, I think that would probably be the appropriate response, in much the same way that the donation disclosure requirements operate. You are not going to invalidate an election if a political party happens to have not disclosed or withheld donations, but you would impose a financial penalty. That is probably the appropriate stick to enforce that.

MR MILLIGAN: What about penalties for unfounded accusations that may have delayed or hindered a campaign and that process being used pretty much to hinder a campaign of an opponent intentionally and then found to be unfounded? What about penalties for that person who has come forward or made those accusations?

Mr Mazengarb: I guess it would depend on how you would prepare the provisions. You do not want to have a chilling effect such that no-one ever brings up an issue. But you could put provisions in place to say, "Look, you are being particularly vexatious. You have made 30 claims about materials and none of them have been upheld." You could say that that is unreasonable and put provisions in place to deter that.

Ms Azize: If someone is being slandered, there is also existing recourse for them under current non-electoral laws.

MR MILLIGAN: Say there is a particular message that is being portrayed out there in the community by a party, any party, and that information is based on privileged information that cannot be released. They can talk about the topic but they cannot hand over that information that proves that they are accurate and that the message

they are giving is accurate. What do you do in that case?

Mr Mazengarb: I am not sure. You would have to get advice on that one.

Ms Azize: I think existing laws are probably the best way to solve that.

MR MILLIGAN: Journalists cannot necessarily—

MS LE COUTEUR: Existing slander and defamation laws must deal with that sort of stuff. I do not know the answer, but it must be known.

MS CHEYNE: In the interests of time, I will be quick. In respect of the 100-metre rule, you recommend we go to six metres. In respect of your earlier comments about corflutes and balancing community expectation, do you think that the six-metre rule is appropriate? Ginninderra, as you are well aware, had over 40 candidates. I am not saying they would all end up at the same place but sometimes there can be a lot. Do you think that introducing a six-metre rule, consistent with the federal elections, would not just create another problem in terms of balancing community—

Mr Mazengarb: It is a good question. I think the point about it being consistent with the federal rules is a good one. I think that does cause us some confusion, particularly when elections are close together. If they are a few months apart, people sort of have different expectations about where they can get material from the political parties.

The experience over the last couple of elections is that the 100-metre rule creates this kind of funny situation where it is almost a worst case scenario. You end up being able to stand close enough to a booth that it is almost worth while doing it. But you are still too far away to really be effective to provide information to people when they go to vote. Andrew, you were talking about the situation outside the Tuggeranong hyperdome where you end up with this proliferation of candidates right outside the entry to both the Tuggeranong hyperdome, businesses and cafes around that area. You are actually pestering people who are just walking into the shops. You are not catching people who are going in to vote. You are just harassing people who are walking past.

If you are closer to the polling booth, people know that they can get material when they go to vote. You are going to be more likely to catch people who are actually going to vote and actually looking for information. I think there are potentially some questions about what you do in terms of limiting the number of people who are outside a polling booth handing out materials. Do you nominate a particular spot where those people can stand so that people still have a free run into the booth but can see where they can get how-to-vote cards or whatever when they go in?

THE CHAIR: Mr Wall?

MR WALL: I am happy for us to move on in the interests of time.

THE CHAIR: Thank you for appearing today. A *Hansard* transcript of the hearing will be sent to you soon for any corrections. In respect of any questions taken on notice today, we will look forward to your replies as soon as possible. As I have

mentioned to the previous witnesses, if the committee has further questions, are we able to provide those to you in writing and/or recall you for reappearance?

Mr Mazengarb: Yes, that is fine.

THE CHAIR: We will take a short suspension while we change witnesses.

Short suspension.

POTTER, MR ARTHUR, President, Canberra Liberals

THE CHAIR: I welcome our next witness, Mr Potter from the Canberra Liberals. Mr Potter, are you aware of the privilege statement in pink on the table? Can you confirm that you agree with that?

Mr Potter: Yes, I agree.

THE CHAIR: Thank you. As I have asked previously today and will continue to do for all our witnesses, are you affiliated with any political party and, if so, which political party would that be?

Mr Potter: Only one—Canberra Liberals.

THE CHAIR: Would you like to make an opening statement in relation to this inquiry?

Mr Potter: Yes, please. Thank you for allowing me to appear before the committee. It is my first time so I hope not to make any monumental mistakes. Just running through some of the other evidence that has been given, the Canberra Liberals do not support the lowering of the age to 16. For us it is simple: you turn 18, you can get married, you can go to war, you can buy a drink or buy a smoke, get a bank loan, enter into a contract and, of course, you can vote. That all happens when you are 18 and you can do that in any order that you want to. It seems to lack a logical argument to say that an individual is not mature enough to make a decision about their own health in regard to drinking or smoking but then at the same time argue that they are mature enough to make a decision regarding the city or the country.

The idea of lowering the age might include more people in the political process from the point of view that it assumes that rolling up and getting your name marked off the roll is participation. Of course, it is to a certain extent, but it is not real engagement. Anybody who has stood out the front of an election booth or scrutineered knows that a lot of people are not engaged and they do not want to be there. That is okay; I am for everybody having their say in the way that they want to. But just lowering the age is not going to make people more engaged.

I do not think you can legislate to force people to be engaged. If we wanted to get a real level of what true engagement is, you would have to remove compulsory voting to see what the real turnout would be. At the moment I think we have a good turnout, but there is no real way of telling who turns up and just marks the ballot in any order they feel like on the day. I have seen enough ballot papers over my time to realise that not everybody is as engaged as we would like them to be.

The other hot topic is donation reform. Canberra Liberals support the roles of individuals, organisations and businesses to donate to political causes. There has been a lot of discussion about banning donations from property developers but the real question ends up becoming: what is a property developer? In the end you end up capturing the wrong people. Is it the person that builds a granny flat out the back of their property and rents it out? Is it the person who buys four or five blocks of land at

Throsby, builds some houses, tries to sell them, in the end cannot sell the last one and decides to rent it out? Is it somebody who sees an opportunity, buys a block of land, maybe a Mr Fluffy block, gets plans drawn for a dual occupancy, decides that they cannot afford to actually build that and then sells that on as an ongoing concern? Are they now a property developer? I have read the New South Wales rules a couple of times; they still seem quite vague to me. I actually do not know whether I fall under that category or not.

My problem with this is that it assumes property developers are a different type of person. I just do not see that they are. They are just like everybody else. They are trying to run a business. They are trying to make a dollar. If the issue is undue influence on governments or public officials, then that is the real problem and we should be looking at what we can do about that side of it. I think in the end changes in this area end up capturing the wrong person.

With donations as well, individuals and businesses donate for a variety of reasons to campaigns. Sometimes they are just happy to donate money because they cannot donate time. We look at a donation of, say, $5,000 but we do not consider a donation of someone's time. A few people working together over a couple of weekends could easily equal that same monetary donation. I have probably reached a time in my life where I do not particularly want to be out every weekend handing out how-to-vote cards and the like. In some ways I would like to take the easy option and just write a cheque. But does that carry any more weight than a volunteer's time? Once we start going down the track of saying this particular group of business people or this type of person cannot donate then you have to look at who is donating time. That has a monetary value as well, but we do not want to put a monetary value on that.

The other item is people who are not on the ACT electoral roll. It does not account for the times that we live in. I run a business in town. I employ a substantial number of people. I currently live in the ACT, but what if I move to New South Wales? I still want to be involved in the ACT. My major investment is still in the ACT. The people I employ are in the ACT. Because I have chosen an address at Michelago or out at Yass, does that reduce my right to be involved in the political process in the ACT? I do not see how it can because you want my money in town here. You want my investment in the city. Because I have chosen for whatever reason to live outside of the boundary then why should I have less say in what goes on, particularly when my investment is here?

Third-party campaigns, I hope the committee can have a good look at this. It is an area that I think is open to abuse. We support the role of organisations to be actively involved and donate to parties, but if a single organisation can set up a number of separate businesses, separate legal entities, and then spend up to the cap in each one of those, it seems to go against the spirit of the legislation. There have been some reports in the media that this tactic was used at the last election. I do not know details of that, but it seems that if there is a little loophole there and if people have gotten away with that, they will look to exploit that at the next elections. I hope that is something you can consider because it is obviously not the intention of the legislation.

Movable signs, corflutes: Canberra Liberals do not support any calls to abolish corflutes. I know they can seem unsightly, and there did seem to be a lot of them at

the last election, but they are still a reasonably cheap and effective way for minor parties or individuals to get their message across. Out in Belconnen I can remember seeing the Tara signs. They were quite cleverly done.

MS CHEYNE: Thank you.

Mr Potter: I cannot think of the guy's name, but there was a young bloke out in Belconnen who had different shapes and sizes, bright yellow. They were well placed, they were well maintained. He did a very good job, and why should he be penalised because the major parties went with shock and awe—or shocking and awful—in the volume that they went with? I do not want to see changes to that. I think it is incumbent upon the parties to get a lot better, because I still want individuals to have the right to get out there. You cannot argue that we want elections to be more inclusive and for people to be more engaged but then cut off one of the means for those individuals to participate in the process.

The 100-metre rule—or the 250-metre rule or the six-metre rule—to be honest, I am really confused on this now. I think at the last election we had 250 metres.

THE CHAIR: No.

Mr Potter: It was 100 metres, was it? We talked about 250. We ended up with 100. It is still a long way away.

MS CHEYNE: One hundred from the boundary.

Mr Potter: There were different interpretations on the day. At one polling booth we were 100 metres from the building; at another one we were 100 metres from where the sign on the outside of the gate of the school was. I think we need to look at this in two parts. One is the pre-poll. There were particular businesses in Tuggeranong that suffered because you had people 100 metres from the pre-poll and their shopfronts were surrounded by movable signs and volunteers and whatever. It definitely cannot be the intention of an election to disrupt people that just want to get around and do their business on the day. Maybe consideration could be given to the six-metre rule for pre-poll.

I think pre-poll is just a matter of fact: people are used to doing it. I do not like the idea of having to roll up and give an excuse with an official at the polling booth saying, "Well, your excuse is not good enough. You're going to have to come back in three weeks' time." That is going to be pretty clunky and open to a hell of a lot of abuse to people who do not deserve it and who are just trying to do their job.

On election day I think we need to look at what we can do. There needs to be a balance between the ability of parties and candidates to get their message across but also for the voting public to be able to go about their business without being harassed or have to run the gauntlet of overenthusiastic volunteers. Maybe we could look at having some sort of arrangement where you get your sausage sandwich, you then look at the cake stall and decide you should not be having any of that and then pick up your how-to-vote card. Everybody is behind a table, nobody is being interfered with, everybody has still got an opportunity to get their message across and people do not

feel they are being badgered as they go about doing their duty as a voter.

We could look also at the midnight curfew that you have in Tasmania, although I still think that probably gives the larger parties too much advantage over the minor parties in that you have the resources to get a bigger message out and, of course, the minor parties are relying on that on-the-spot ability to talk to voters.

The MLA communication allowance is complicated, but the bottom line is we employ candidates to represent us for four years. I do not see how we can get to a point where we say, "Look, you can represent us for four years less the nine months of the election period where the cap kicks in." I am not sure what solutions there are or what is available, but the principle of having representatives being able to represent their constituents for the whole period should be the priority rather than any sort of possibility that too much influence is granted to a particular MLA in that election period.

There was another issue which is the cross-over between federal and territory elections. Obviously last time we had the two elections quite close. In principle, all politics is local and local issues will often be used by candidates at a federal level. There was an issue at ACT elections capturing campaign material created for the federal campaign and attributing it as a cost to the local territory campaign. Sure, that is not the intention, but it hinders the ability of the federal campaign to run in its own right and to prosecute any arguments it wishes to do and at the same time handicaps the local campaign because someone has decided that that issue is more local than what it is for a federal campaign.

In summary, thank you for giving me the opportunity to give a verbal submission. We encourage more people to be involved in politics. I encourage more people to donate and belong to political parties of their choice or as individuals to represent their own values and ideas they have. We cannot have legislation that stops people from doing that. Obviously as a major party it is easy to say, "Look, all advantage should be given to us," but we actually want to give everybody a fair go and we want a level playing field that allows more people to be involved.

MR WALL: Mr Potter, you spoke briefly about the discussion going on around this inquiry, particularly with developer donations. You highlighted that it may not address the issue at hand—the influence being put on decision-makers, ministers or members of the Assembly more broadly. What do you think could be done to try to improve the transparency in that space? Is it a case that picking out specific professions or employer types and their families is the right approach? Is it necessarily just property developers that need to be looked at, or should we be thinking in a different space?

Mr Potter: It is a difficult area. The general public consider a property developer is someone who buys a large property, gets a change of use, it is a massive building and there are large amounts of money. That is actually only a small group of people. The bulk of property developers in town are just small family businesses. Should they have any less right to be politically involved? That is the problem with the suggestion, that is, it treats people as different class citizens because of a profession they have.

Do they really have any influence anyway when we have fairly transparent arrangements for what is being donated and who is doing the donating? That is publicly available. I go and buy a property at Lawson to develop 20 units on. I am buying that property from the government. It is already established that it can fit 20 units on it. I am a property developer, but how have I got any influence on that? How have I created any extra money in that? I have not been able to do that. I just do not see that there is a problem. If someone wants to be corrupt, they are going to get around this anyway. I think we are far better off concentrating on having a more transparent process—which we have already got—for actual donations. Hopefully that answers that question.

MR WALL: On increasing participation and activity around elections, you mentioned that if you chose to live across the border in New South Wales but you still ran a business in the territory and you employed people, you would still want to be able to retain your right to have a say.

Mr Potter: Yes.

MR WALL: Do you think a proposal to require donors to political campaigns to be on the ACT electoral roll would exclude other groups and minorities—migrants to the ACT, permanent residents of Australia who are not citizens and are ineligible to vote?

Mr Potter: That is exactly what happens. The territory government is quite happy to take my money in rates and taxes and charges but then says, "Look, sorry, you don't live in the ACT, so you can't have any say." At the end of the day if you are involved in the town, even if you are not on the electoral roll, why can you not be involved in the political process, particularly when you are arguing that we want more people involved.

MS LE COUTEUR: Are you seriously arguing to increase the electoral roll, as some councils do, so that every business is included?

Mr Potter: No.

MS LE COUTEUR: Because that is really where your argument would be going.

Mr Potter: You could extend the argument to that if you wanted to. I am just saying that the reality is that there are a lot of people who work in town but live outside of town. All I am saying is that they should still be able to donate to parties. They should still be able to belong to a party. I am not saying that they should have a right to vote, although that is an interesting question because we want people to invest in Canberra. If you want people to invest here, they must also be able to have a say here. The say does not necessarily mean a vote; a say just means to be able to belong to a political party and donate to a party that shares your values.

MR MILLIGAN: In relation to the possibility of banning developers, are there any other industries or professions we should also considering banning, such as the law industry? Someone from the law industry would probably have more influence on parliament than a developer would. Where does it stop? If we ban developers, what is next?

Mr Potter: That is exactly the problem: you target a particular group and say that there is an issue there because of whatever issues you have decided apparently exist. What group is the next group? Lawyers would be a good example. From there, do you then say, "Well, look, unions have too much influence. Should we ban union donations?" They are quite active in the way they advertise. They have issues they want to promote. How are they now allowed to do that if you have already set a precedent that says we are going to ban this particular group of people? It just does not seem to make any logical sense to me, particularly when what we are actually after is transparency. Why not concentrate on transparency of donations and any influence and leave it open for who wants to donate and participate?

THE CHAIR: Mr Potter, it is great that you are here. Some of the points you raise are interesting and insightful. Is there a reason that you did not put a written submission in to the committee?

Mr Potter: Only that I always hoped that we would be able to do a verbal submission. I was inexperienced in this area and I actually thought there would be more questions backwards and forwards. So, my fault.

THE CHAIR: No, it was not a blame game; it was a simple question.

Mr Potter: No, I have broad shoulders, I can take it.

THE CHAIR: It was simple curiosity.

MR MILLIGAN: I have a question in relation to increasing voter participation. One of the arguments has been that to increase voter participation we should look at dropping the age to 16. Research and studies done previously have shown that less than 50 per cent, or around about that, of those aged 16 and 17 would participate in a vote. In effect, that would pretty much add to the percentage of people not participating overall because they are not turning up and getting their name marked off on the roll. How else could you look at increasing voter participation if you were not looking at reducing the voting age to 16?

Mr Potter: I think there is still an issue there. We are assuming that your name has been marked off the roll and you have participated and somehow that is good. It is a very narrow view of what participation could be. I have children at school who are already doing civics-type classes; they are understanding how elections are working and why they are important. I think we could spend more on that sort of thing to explain why it is important. But it is probably more incumbent upon the parties to make it easier for people to join, to participate and to be part of the process. Just lowering the age is almost like ticking the box and saying, "Oh, beauty, we've done something," whereas it actually really does not. It does not do anything.

And do people have to be as engaged as you are? You are engaged in it; you understand it; you are part of it. For a lot of people that is not necessarily their core thing. Like I say, you stand out the front of an election booth and you hand out how-to-vote cards and there are plenty of people who do not want to be there. They are only there so that they do not get a fine. That is okay; I do not have a problem with

people who make that choice. I just do not see that lowering it to 16 is going to improve that. I just think we end up with a whole heap more people that are disgruntled about it instead of operating in a more positive manner and saying, "Look, this is part of what happens when you turn 18. You get a licence, you can do this, you can do that and you can also vote, and that's a great thing."

THE CHAIR: You can get your licence at 16 and 17 these days.

Mr Potter: I am from Victoria. That is true.

THE CHAIR: I am not advocating one way or another. I, too, have teenage children who are both 18 now. There have been some calls in some of the submissions for the possibility of making it non-compulsory for 16 and 17-year-olds. You are mainly talking about the participation, but there are fines if you do not show up to vote. A 16-year-old in most cases in today's society is still at school and not necessarily earning money, unlike when I was growing up. What are you views on those things?

Mr Potter: That becomes another problem because at the moment we have a compulsory system, so you are then trying to run the argument that says you can vote when you are 16 but it is an option, it is voluntary and you can opt in. We are then going to ask people to—what?—change their classification on the roll when they turn 18? It seems to me that there is no real reason for this. And it would be terrible if we got to the point where we were saying, "You're 16 and you have to vote and, by the way, there's a fine if you don't." How would you even enforce that? It just does not seem to make any sense to go, "Well, we'll make it a voluntary system because somehow that's going to make people more involved." I just do not see that that does it. It is not going to achieve what we want. I think we actually have quite a good turnout—90 per cent. Some 30,000 people did not turn up because they were not here, moved away, did not change their details, died, whatever happened. That is pretty good.

MS LE COUTEUR: You describe the corflutes as being shock and awe and you expanded on that to be shocking and awful, but you had some hesitation about any changes. Given that it is shocking and awful, what can we do?

Mr Potter: That is for the parties to do it in a more effective way. The shock and awe approach of putting out hundreds and hundreds of corflutes I do not think has the impact that it had in the past. But if we change any rules in this area it is not really penalising the Liberal Party or the Labor Party; all you are doing is penalising the micro parties or the independents. Poor old Vijay in Belconnen who puts a red dot on his nose so that he can get seen has only that way of getting out there. I do not want to see us change that. I do not see that you can put a limit on the number, because how could you enforce that?

We are like every other party; we have certain losses on corflutes that you replace. That is just part of it. I do not see that you can legislate to reduce the number because you cannot manage it. I do not want to take away one of the platforms for an independent or a micro party to get started. The message to the major parties is really: how do you do it in a more effective way? Just putting out more of them does not work; you have to do it in a better way. We have some ideas on how we are going to

do that, but we will wait and see what happens for the next election.

MS CHEYNE: Do you support greater enforcement powers for TCCS?

Mr Potter: In the placement of the signs?

MS CHEYNE: Yes. Some parties and candidates, for example, put signs on people's nature strips without seeking permission.

Mr Potter: Yes.

MS CHEYNE: So things like that, or when they are on a roundabout or a median strip where they are not supposed to be.

Mr Potter: That is right, yes.

MS CHEYNE: I think it has come to light that the city rangers do not actually have very many enforcement powers. Would you support that?

MS LE COUTEUR: Or the other one is out-and-out theft of other party's property.

Mr Potter: I agree.

MS LE COUTEUR: Which was very prevalent.

Mr Potter: Two parts to that: I would have thought they had enough powers in that area to remove signs, but apparently they do not. I do not have a problem with that. I think one of the issues we have is if we reduce the areas where you can put signs, the unintended consequence is that it concentrates where you can have them, so there look to be more of them. Obviously you would have to look at how you can get around that. As to the theft of signs and stuff, I am not pointing fingers, but we lose a lot of signs, too—a lot.

MS CHEYNE: We all do.

Mr Potter: Yes.

THE CHAIR: I think it is across the board, and it is not necessarily the parties.

Mr Potter: Yes, completely. But, it is amazing because I have some stakes that will be going into their fourth campaign. I have still got them and I can see where they have been glued and screwed each time. So some do make it through.

THE CHAIR: Thank you, Mr Potter, for appearing today. A *Hansard* transcript of the hearing will be sent to you soon for any edits or corrections. If there are any questions you have taken on notice today, the committee looks forward to your reply as soon as possible. As I have said to our other witnesses today, as we progress through the hearings there may be more questions that arise from the committee. Are we able to provide those to you in written format and/or recall you for another hearing?

Mr Potter: Not a problem. Thanks very much.

THE CHAIR: Thank you.

Short suspension.

GOWOR, MR JACOB, President, ACT Liberal-Democrats
CLIVELY, MR STEPHEN, Policy Director, ACT Liberal-Democrats \

THE CHAIR: I welcome our next witnesses to today's committee hearing, Mr Gowor and Mr Clively from the ACT Liberal-Democrats. I make you aware of the pink privilege statement that is on the desk before you. Could you please read it and note your agreement to that before we get started?

Mr Gowor: Yes, that is fine.

THE CHAIR: Before we proceed, I will ask a question that I will continue to ask all witnesses that are appearing at our hearings. Are you affiliated with any political party? If so, which political party is that?

Mr Gowor: Yes, we are: the ACT Liberal-Democrats.

Mr Clively: Yes, ACT Liberal-Democrats.

THE CHAIR: Would you like to make an opening statement before we go to questions?

Mr Gowor: Yes. First of all, I would like to thank you all for the opportunity to be here today and for looking at our submission. We think that the submission largely speaks for itself, but we do have a few salient points that we would like to expand on. With respect to the terms of reference, we do oppose the lowering of the voting age. Notwithstanding the criminalisation of minors, which is one of our first and primary concerns, we do not think there is actually sufficient public support for this proposal. In any such case, this should be put to the electorate via a binding referendum. While doing so, we would ask you to consider whether voting should actually remain compulsory and actually seek approval for the public funding scheme that is currently in force.

The ACT Liberal-Democrats oppose the prohibition on donations from property developers or any other party for three reasons: firstly, the proposal unfairly targets a specific industry. The fact that some people might dislike property developers is not really enough. If we are going to ban donations from property developers for moral or other subjective reasons, what about banning donations from the sex industry, cigarette vendors or gambling venues? Clearly, the better approach is to let the law regulate what is legal and what is not and leave the moral judgements out.

Secondly, the proposal requires a better rationale. Banning property developers in particular suggests that there is an issue in relation to that particular industry. I hate to point it out, but the ALP has been in power for 16 years, so if there is an actual problem here that we are not aware of, why aren't we hearing about it?

The third is that it is simply impractical. This actually goes more broadly not only to property developers but also to other restrictions on donations that have been proposed, especially when it comes to party-related donations and movements of funds between major parties federally and locally across the border and so forth. It

would be incredibly burdensome to try to trace all of that.

With regard to better participation, we would really like the committee to seriously consider a "none of the above" option on the voting ballot. From reading the other submissions, it would appear that we are quite a way off having voluntary voting in the ACT. It seems unlikely that persons that benefit from $8 per vote would repeal it. So at the very least there should be an option for somebody to purposely vote for no-one without actually casting an invalid vote. I am happy to speak about how that works in other jurisdictions.

Secondly, we strongly oppose the increase in the fine for not voting. We would like the committee to consider seriously the demographics that this will affect: weekend workers, hospitality, service industries, the hairdresser that I went to just before and those with disabilities. They are the ones that are most likely going to be fined and least likely to be able to afford it. Two other matters in the other category: we believe that the 100-metre ban should be reversed and we do oppose the truth in advertising laws. We invite any questions.

MS CHEYNE: Page 9 of your submission refers to automatic enrolments. I understand to an extent your point that automatic enrolments result in adverse impacts on privacy. But can you talk me through what you mean by there being adverse impacts on disadvantaged Australians arising from automatic enrolments? I was not sure what the justification was for that statement.

Mr Gowor: Basically, this is based on demographics. If you are a wealthy individual, if you do not take any social security benefits, if you have a driver and so on, the matching of your personal information with other records the government may hold is very difficult to do. There is this push federally to start data matching across several government agencies. As a citizen, I understand how that becomes more efficient in service delivery. But matching my information that I have given to the government for one particular purpose to serve another purpose, which I did not give the government permission for, is an invasion of privacy.

During the election campaign we were approached by a number of people who are what we call secret on the electoral roll. They approached us with concerns recently about this. It was a former judge or someone like that who said, "I'm not on the electoral roll at the moment—well, not visibly." There is a very good reason for that. This goes to inadvertently putting private information about people that are, say, witnesses in court proceedings and things like that out into the public domain, exposing them to unnecessary risks. We are just not convinced that (a) we can make the system secure enough to do that, and (b) we really do think that it is completely unnecessary.

MS CHEYNE: Are these people the disadvantaged Australians you are talking about?

Mr Gowor: The disadvantage goes towards people that are claiming Centrelink, youth allowance, those kinds of things. If we start matching their data, whereas we do not match other citizens' data, they are the ones that are most likely demographically to be affected by these changes.

MR WALL: Mr Gowor, given that your submission is one of the very few that touched on compulsory and voluntary voting, I am keen for you to extrapolate a little more on this. What do you think, from your perspective, the benefits of going to voluntary voting would be?

Mr Gowor: We talk about voter engagement. I put the question to the committee: how do we actually know how engaged the electorate is? At the moment we have this measure, "Well, 92 per cent of people voted, so that is voter engagement." From our perspective, school attendance is not the same as learning. Just because you rocked up to vote does not mean you actually engaged to vote. You basically complied with the law.

By moving to voluntary voting, from a philosophical perspective it makes voting a right instead of an obligation. I do not have the right not to pay my tax. I have an obligation to pay my tax. Voting should be a right, not an obligation. But also by moving to a voluntary system, we will be able to have a better measure of how engaged people actually are. If you are being elected—I use the generic "you", not yourself specifically—if a Legislative Assembly is being elected with only, say, 60 per cent of the voters turning out, that sends a clear signal. I personally do not think that that is the case.

But before you try to address something like voter engagement, I think you need to measure the extent of the problem, if there is a problem, prior to putting in other measures to try to boost that. Stephen, did you have anything to add to that?

Mr Clively: No, I have nothing to add.

MS CHEYNE: I refer to the references in the table of countries that you refer to that do have voluntary voting. Some have very low turnouts. I note that some have extraordinarily high turnouts. Do you think that some of those figures are accurate, particularly the 99.7 per cent?

Mr Gowor: I am sorry; I do not have the table in front of me. You are referring to the table with the highest turnout and the lowest turnout?

MS CHEYNE: Yes. This is what you have drawn on to kind of bolster your argument about voluntary turnout and that we might not necessarily see a lower engagement. But is 99.7 per cent really a reliable figure in a one-party state?

Mr Clively: This draws on a database of somewhere between 100 and 200 countries. If there were a few outliers who have North Korean-style turnout figures or whatever, they would be kind of swamped by the fact that there are so many countries in both groups. What you are saying could have merit but I think it is overstated as a problem.

Mr Gowor: It is interesting to note Nevada's experience with this. After Watergate they decided that they would put in a "None of the above" box. The first time they ran an election they had, I think, about 10 per cent of the vote going to "none of the above"—in other words, "I don't trust any of you guys to be governor."

MS CHEYNE: Not necessarily trust.

Mr Gowor: No, that is right.

MS CHEYNE: Or "I don't care."

Mr Gowor: Or "I am completely disengaged." Over the years that has decreased and now it has increased again. But anywhere between two per cent and 10 per cent is normal when you have got "none of the above". Our preference is obviously for a completely voluntary system. I am just suggesting another pragmatic way forward for the Assembly, given its current make-up.

MS CHEYNE: But in respect of the none-of-the-above option, do you not think that people are aware of what a donkey vote is, that you can really go in there and just pick up your paper, fold it and chuck it in the box? I have seen people do that. That is common. That is effectively none of the above. So why would a none-of-the-above box help?

Mr Clively: Some of the research on this suggests that these methods of just throwing it away or doing what a lot of people in France do, which is the blank vote, makes it hard to determine what that really means, whereas this method is the most decisive in trying to understand what is in people's minds.

MR WALL: Do you propose anything should happen, particularly in a multi-member electoral system like we have? If "none of the above" achieved a quota, what happens?

Mr Clively: What happens in Nevada is that it is the next highest person. In every system that operates like this, they have the next highest person. But that would sure send a signal.

MS CHEYNE: But who is the next highest in our preferential system? I am not sure how that would that work in Hare-Clark.

Mr Clively: No, there would be no flow of preferences. It would be "none of the above". Then the person who got the most votes of everyone else, of the other 90 per cent, would be the person elected.

MS LE COUTEUR: The ACT Greens have "seek another candidate". It is sort of the equivalent as a standard in an election. I assume it would work sort of like that. You say, "Okay, they didn't like any of them. We'll have to start again."

Mr Gowor: The other thing that it gives you insight into is whether the ballot paper too hard to understand. Then you have all of the people that actually do not want to vote or do not want to choose anybody on a ballot paper versus those that did want to choose something on a ballot paper but the ballot paper was so confusing that they were not able to do that. I do not think that that is the case in the ACT. Federally, I voted in Victoria once for the Senate election during my lifetime. It was literally like a towel. You could pull it out and it was a towel. It gives you insights that at the moment we do not have.

Mr Clively: There certainly is an issue at the moment. The Electoral Commission, in its report on the election, surmised what might be deliberate votes, either electronically or on paper. If you tot up those figures, something like 1.8 per cent of the vote accounts for that deliberate choice. There is currently an issue there. We are saying, "Make it clearer and understand what people are saying."

Some of the research suggests that when winners win but there is a significant none-of-the-above vote, it makes them less likely to think that they have got a mandate to do things. They won; they didn't necessity get the whole mandate. It is a way of trying to reflect the wider views of the community.

THE CHAIR: You mentioned the none-of-the-above stuff. That would still work with electronic voting?

Mr Gowor: Yes. You would just have a box that is "None of the above".

Mr Clively: It might make things a lot easier because the commission surmises that there were several hundred just returned cards or deliberate choices. You have to say it twice to say, "I am not voting." It was a couple of hundred people that did this.

THE CHAIR: And you do not think that the current system for electronic voting—"I am not voting"—is substantial enough?

Mr Clively: You do not know what the people who just drop the card in were thinking. It could be, "I'm just confused," as opposed to, "I don't want to vote for you."

MS CHEYNE: Should we have a box saying, "I am confused"? If we are going to have one box saying, "Yes" or another saying, "Fill in the blank"—

Mr Clively: I think it would be prying too much to ask for a reason.

THE CHAIR: I know we have already spoken a lot about corflutes, but this one was interesting: increase the time limit to remove the corflutes. Can you expand on that for me?

Mr Gowor: Yes. We are probably the only ones that put that in. It might be a function of the fact that we are a very small party but we actually managed to put out a tremendous number of corflutes. It is very, very hard for a minor party to have enough volunteers to man election booths on election day, let alone then have to pull them down in a very short amount of time. Given the fact that we are basically reliant on volunteers and the volunteers put in a huge amount of effort for the three weeks before the election, to give them a few days off to recuperate before they have to take down the road signs would be great.

It led to a few safety concerns that I had, one of which was: we had a deadline to pull them up. The last thing that I want people to be doing is: after the election is done, they go back to work on Monday. We need to pull down all the corflutes. Here they are at 7, 8, 9, 10 o'clock in the evening driving around pulling up corflutes. Whether

they are there for an additional 24 or 48 hours, they are not hurting anyone. The safety argument is what I think should come first. That is where that proposal comes from.

THE CHAIR: If that is your only suggestion about corflutes, can you think of any other things need to be changed about corflutes—the numbers, the positions, the visibility? We have had lots of different opinions today. It would be interesting.

Mr Gowor: We think that it is an election and these things are to be expected. I think a lot of the discontent this time around was because there were two elections in such short succession and there was a lot of voter fatigue. As to putting limits on freedom of political communication, I think there has to be an overwhelming reason to want to limit that. It is our view that the current laws are fine and do not require any amendment.

MR MILLIGAN: I would like you to elaborate a little more to justify why you believe that the expenditure cap should be raised from $40,000 back to $60,000.

Mr Gowor: For one simple reason: we do not believe that money buys elections. It is completely unnecessary to lower the cap. As you guys have debated today, this is like trying to measure the impossible: where the money comes from, who technically spends it, on what, whose cap does it count towards—all of that kind of stuff—and then you have got a party that spent over $100,000 that attracted votes in the hundreds. And then you have got our experience, which was all basically self-funded from the individuals within the party, with a grand total of $16,000. On a per-vote basis, probably it was the cheapest or close to the cheapest.

We do not think that putting these limitations on the dollars is in any way beneficial. I do not think it benefits anyone and I do not think the argument has been made to link political donations with political success. We have seen in recent times the Clive Palmer scenario and all that kind of stuff. Yes, it happens but it is usually fairly short lived. And in many respects we should encourage that. We should encourage these individuals to come in, have a bit of a shake-up and make some people nervous in the political establishment and then move on. I think that is great and I think that is in the spirit of our democracy.

MS CHEYNE: If money does not buy elections, why have a cap at all?

Mr Gowor: We would actually like the removal of the cap entirely in the first instance. But failing that—

MS CHEYNE: You think $60,000 is appropriate?

Mr Gowor: Failing no cap at all—we would prefer no cap at all.

MS CHEYNE: Why not $100,000?

Mr Gowor: As high a cap as—

Mr Clively: It just happened to be $60,000 before. Our submission says we would prefer to remove the cap, but why not just take it back to what it was before?

MS LE COUTEUR: This is not so much a question as a comment. You were talking about developers and saying that there was no particular reason to exclude them. The New South Wales government, particularly the New South Wales Legislative Council, has enumerated the reasons for this on many occasions. There have been many instances where developers' influences have led to what the courts have found to be decisions which were influenced very much by it. Given the clear historic precedents, particularly given the ACT Legislative Assembly does do planning—we are a local council as well as a state government—how do you feel that we are different from the rest of Australia?

Mr Gowor: I do not think that we are different from the rest of Australia. The rest of Australia, barring one jurisdiction—New South Wales—does not have this limitation. It is only New South Wales that has it. The reason why New South Wales put it in was that they had a specific problem that they were trying to address. Our argument is that, in the absence of evidence that this is actually a problem, the first reflex should be to allow donations until such time as there is some perceived conflict or perceived decision or there is a perception that a decision has been influenced. I am not aware of any cases in the ACT where that has happened.

MS LE COUTEUR: But how could we be aware in the ACT? We do not have an integrity commission or anything like that. I am not suggesting any particular instance; I am just saying that we have not any way that we could get the evidence that we are so different from New South Wales. Arguably one of the reasons that they found their issues was that they actually had an ICAC who had the power to look at it. I am not suggesting New South Wales have more problems than the rest of Australia, just that they decided that they would look at their problems.

Mr Gowor: My short answer to that is: we have an opposition in the Legislative Assembly and we would hope that if they became suspect of any wrongdoings by the particular party or parties in power or that have the majority they would raise that. I expect that they would.

Ultimately, we should be focusing on reporting of donations, reporting of gifts and gifts in kind and things like that, things that can be perceived to cause that conflict in the first place. It is a far better approach to really enforce reporting and quick reporting of donations so that people can draw the line, so that people can go, "You received a donation here and then that particular individual or firm ended up building X, Y, Z." Then you can draw that line and go, "Now we might have a problem. Let's investigate it." But to have a blanket rule is, we believe, unnecessary.

THE CHAIR: Thank you. That concludes our hearings today. A *Hansard* transcript will be available to you soon for any additions or corrections. If there were any questions taken on notice, the committee looks forward to your reply as soon as possible. As already stated, if the committee has more questions or queries, we would like to be able to provide those to you in writing for a response or possibly a recall.

Mr Gowor: That is fine.

THE CHAIR: The *Hansard* of the hearing will be available in the next day or so. The

committee's next public hearing is scheduled for Thursday, 10 August. A program for that hearing will be put on the website before the hearing. I would like to thank all witnesses today and the committee for all their efforts.

The committee adjourned at 12.50 pm.