

COMMUNITY DEVELOPMENT AND JUSTICE STANDING COMMITTEE

**INQUIRY INTO THE ADMINISTRATION AND MANAGEMENT
OF THE 2017 STATE GENERAL ELECTION**



**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 18 OCTOBER 2017**

Members

Mr P.A. Katsambanis (Chairman)
Mr M.J. Folkard (Deputy Chairman)
Mr Z.R.F. Kirkup
Mr A. Krsticevic
Mr D.T. Punch

Hearing commenced at 10.20 am

Mr JOHN SCHMIDT

Electoral Commissioner, NSW Electoral Commission, examined:

Mr SIMON KWOK

Executive Director, Elections, NSW Electoral Commission, examined:

Mr MARK RADCLIFFE

Director, Election Innovation, NSW Electoral Commission, examined:

Ms ALISON BYRNE

Executive Director, Funding, Disclosure and Compliance, NSW Electoral Commission, examined:

The CHAIRMAN: On behalf of the committee, I would like to thank you for agreeing to appear today to provide evidence in relation to our inquiry into the administration and management of the 2017 Western Australian general election. My name is Peter Katsambanis and I am the Chairman of the Community Development and Justice Standing Committee. I will introduce you to the other members of the committee: the member for Dawesville, Zak Kirkup; the member for Bunbury, Don Punch; and the member for Carine, Tony Krsticevic. Unfortunately, our Deputy Chairman, the member for Burns Beach, is absent today. You have agreed to provide evidence to the committee here in Western Australia by electronic means from a location outside the state. Uniform defamation laws were enacted across Australia in 2005. This means that where a witness is participating in an evidence hearing from outside Western Australia, their evidence is still covered by parliamentary privilege. It is important that you understand that any deliberate misleading of this committee may be regarded as a contempt of Parliament. Your evidence is protected, obviously, by parliamentary privilege. However, this privilege does not apply to anything you might say out of today's proceedings.

Before we start with our questions, do you have any questions about the process or do you have an opening statement that you would like to make?

Mr SCHMIDT: No questions, but one very quick comment for the benefit of the committee. Yesterday, in New South Wales a new electoral bill was introduced into the Parliament here. That is now available on the parliamentary website. It will replace, if passed, the 1912 legislation which is currently in place. It has been under preparation for approximately a decade, so for us it is quite an exciting time to see this modernised, comprehensive bit of legislation heading through the parliamentary process.

The CHAIRMAN: Excellent; that is good news. Are you able to explain to us that decade long process? Was that facilitated through the commission, through the standing committee, or was it something that came out of executive government?

Mr SCHMIDT: It is a combination. In New South Wales the cabinet office was a separate organisation for many years before being merged into a Premier and cabinet situation. The idea of modernising the legislation has been around as long ago, as I said, as a decade. There have been numerous parliamentary inquiries over the years recommending changes, and different governments of different persuasions at different times have taken up the idea of drafting legislation, but it has

never managed to get to where it is now. As part of the most recent iteration, there was a public exposure of the bill a couple of months ago and, as I said, there have been a number of parliamentary committees and inquiries over the years who have recommended changes to the legislation, which will now be reflected to a greater or lesser degree in that bill.

The CHAIRMAN: In relation to the existence of a joint standing committee in New South Wales—I think it is a standing committee on electoral matters—here in Western Australia we do not have such a committee, and the task force or committee like ours to look into the electoral process, the act, as well as about 20 agencies and government departments. Are you able to comment on the relationship generally between your commission and the New South Wales parliamentary committee, and perhaps specifically as to whether you believe that is an advantage to the electoral process in New South Wales in having that interaction?

Mr SCHMIDT: I believe that it is a useful arrangement to have an electoral matters committee. Partly, it reflects the independence of the commission in its duties in carrying out election-related activities. We have built up over the years—my predecessors, and I hope that is continuing under myself—a very constructive level of engagement with that committee. There is full and frank exchange of views before the committee if issues arise, but I think there is mutual respect for the roles which we take, and we certainly respect the input from the committee. But it provides in that, because it is a narrower focus, an opportunity for a specialised and in-depth consideration of electoral matters.

The CHAIRMAN: There is a practice here in Western Australia for some of our committees—I used to sit on the estimates and financial operations committee of the Legislative Council in the last Parliament. We had a practice of meeting in camera at private hearings with the Auditor General, for instance, simply to discuss workflow and issues outside of public hearings. Do you utilise that sort of private session process in New South Wales at all with your joint standing committee?

Mr SCHMIDT: It has not happened during my time—I am not sure, looking at my colleagues. We are not aware of it having happened, but, of course, it is always open to the committee should they wish to go into private session.

The CHAIRMAN: Thank you. I will hand over to my colleague the member for Dawesville, who has a significant interest in electoral matters and has been involved in election process for a long time.

Mr Z.R.F. KIRKUP: Thank you, chair. Good afternoon, everybody. Commissioner, I am very keen to go through a couple of questions in relation to iVote, if we could. I suspect, as you indicated before, it might be Mr Radcliffe, but in any case we will kick off. I am keen to understand, as Western Australia has adopted the New South Wales model for iVote, how long has that relationship existed between our state and yours in respect to the commission's utilisation of your voting system.

Mr RADCLIFFE: I think there were some discussions and I think my first visit to the WAEC would have been in February 2016, so just over a year before the election.

Mr Z.R.F. KIRKUP: New South Wales has been utilising iVote for some time, as I understand it; is that right?

Mr RADCLIFFE: Yes. We rolled out iVote in the first instance in 2011 for the state general election. We then rolled out for the 2015 general election a new version, which is the version we have just used this past weekend for a by-election and is the same version that was used by WA in March.

Mr Z.R.F. KIRKUP: In relation to the iVote system, has the commission ever had an instance where it has been subject to an electronic attack by some outside party trying to gain access to the system or manipulate the system in any way?

Mr RADCLIFFE: I guess the answer would be yes in the sense that when you put anything up on the web, there will be people trying to attack it. During by-elections we normally just see the typical automated probing.

Mr Z.R.F. KIRKUP: Just like a DDoS attack or something?

Mr RADCLIFFE: No, not really so much DDoS, but just people looking for weaknesses through automated bots, and that would happen to any website. During the general election, we observed some testing penetration attempts that were more orchestrated by a human rather than automated, but all of them were blocked. It is just part of having any website presence these days.

Mr Z.R.F. KIRKUP: In that case, Mr Radcliffe, from your perspective or from the commission's perspective, there has never been a successful breach?

Mr RADCLIFFE: No.

[10.30 am]

Mr Z.R.F. KIRKUP: There has been a range of concerns that have been raised with this committee over the course of a number of hearings from academics and other political parties about their exposure to the data that is used to sort of operate the system and the algorithms and systems in the network and externally that sit behind iVote. In New South Wales, does the commission routinely expose that or turn to an open source arrangement so that people can understand or interrogate the data, or do you run still a closed shop in that respect?

Mr RADCLIFFE: There are two comments I would make. First, in terms of data, the preference data that comes out of iVote ultimately we publish, but in terms of the source code of the application software, it is not something that we have published or made public, but we have paid for selected academics to review the source code, or at least the critical parts of it, and provide feedback, and that went into making changes that we and also the lead vendor implemented in the software.

Mr Z.R.F. KIRKUP: In that case, when we talk about not, I guess, publishing the source code, is there no concern about the prospect that political parties who are participants in the election cannot interrogate that further? I mean, I realise, as you said, you have given it to academics, but has there never been a concern raised by political parties in New South Wales that they cannot understand what that looks like? I am 30; I am part of a more electronic generation and I am all for, you know, as much technology as possible in our lives, but I find it interesting, given that obviously commissions usually operate entirely on transparency and accountability, that that source data is not released.

Mr RADCLIFFE: Yes. So there are restrictions with the current vendor contract that we have. You may not be aware that we have got funding for what we are calling an iVote refresh project. We are going to have a new version for our 2019 state elections, and amongst a number of improvements, one of the things we are looking at is the possibility that we may be able to be more transparent with the source code. It is not definitive that we would go with open source necessarily—a lot of that will come down to the suppliers and the situation and circumstances—but we are not closed to that idea.

Mr SCHMIDT: And if I could add to Mark's response there, you may be aware that, pursuant to a recommendation last year from our parliamentary committee, a number of the recommendations dealt with iVote, and one of them was that there be an independent review of elements of the iVote system, and a specific term of reference for that is looking at ways of improving opportunities for scrutineers and scrutiny in the iVote process. So, for example, under the arrangements as they stand at the moment we have an open invitation for parties and candidates to appoint scrutineers to examine the unlocking of the iVote system and production of the votes et cetera. In the last

by-election we have used it and no one has nominated—I am not sure if there has ever been scrutineers of this —

Mr RADCLIFFE: From two parties we had scrutineers observe the process at the general election in 2015, but not at the three subsequent by-elections.

Mr SCHMIDT: And the difficulty is, because of the very nature of it being an electronic system, trying to develop an arrangement whereby that is a productive and useful engagement with the scrutineers, and so, as I said, that is one of the elements which is being looked at in the review. While I am talking about the review, it is being led by a fellow called Roger Wilkins—you may or may not know of. He was head of a cabinet office in New South Wales for many years and was head of the Attorney-General's Department at the commonwealth level. We are just putting together the experts to assist him in that process at the moment, but it will include people with academic, cybersecurity and political commentary background. But that work is just starting up now and, as I said, scrutineer and access and transparency relating to iVote is a key element of that review.

Mr Z.R.F. KIRKUP: Thank you, commissioner. Just in relation to the scrutiny of the 2015, I think, election, as you say, what does that look like for a scrutineer? I mean, what do they come in and see in that case? I mean, I am curious to understand what that is. We have had the recent Senate elections—it was 2016, I think—and we had a similar situation where the major parties came in and scrutinised the process for the electronic scanning and outcome for the preference flow there. It was a pretty clinical process. It is obviously not as, you know, menial, I suppose, as the counting of each individual paper ballot, but they saw a computerised preference shuffle. Is that the same thing that happens in this case when scrutineers came in?

Mr SCHMIDT: Okay. Well —

Mr RADCLIFFE: I was going to say, because you observed it —

Mr SCHMIDT: Yes.

Mr RADCLIFFE: — from a layperson's view, I think the commissioner can comment better than I would.

Mr SCHMIDT: And I have no technical training at all. It is challenging when you look at it, because what it consists of on the day is we bring our particular hardware into a specific room where we have academic experts and other observers, and scrutineers if they happen to be appointed.

Mr RADCLIFFE: The auditor.

Mr SCHMIDT: And we always have an auditor—an independent auditor from a commercial firm who watches the entire process. But what people basically see is a series of technical steps of inserting secure keys which transfer information from secure computer systems to other secure computer systems, and then those systems decrypt the votes, because they are in an encrypted format until the election event is over. We have an academic or academics in the room who have built their own software, and they are given a copy of the encrypted material, which they compare again, and if you look at their screens, it is a maze and a jumble of electronic data which, to the general observer, you know, would not provide a great deal of insight. But they provide that assurance that the encrypted data they have got matches the encrypted data on the voting boxes that were the computer. But to the average person, if you were a scrutineer or myself walking in off the street, it is not the most informative of processes to go through, so we are trying to think of ways of making that more meaningful.

Mr RADCLIFFE: Yes, this is one —

Mr Z.R.F. KIRKUP: Sorry.

Mr RADCLIFFE: I was just going to say, with our refresh project, this is actually one of our objectives. Notwithstanding the independent review, we are already aware—we have had feedback from parties—that it is hard to understand. So, with the opportunity to create a new version, we have got the challenge of coming up with both scrutiny and audit that are meaningful and can be more easily understood by those participating.

Mr Z.R.F. KIRKUP: Commissioner, thank you very much for that. I mean, it seems to me, obviously, it is quite a production process to get it to a point where people can see the outcome and, as you have said, it is really quite complex for them to actually identify if something had gone wrong, I suppose, because I imagine the commission knows what it is looking for if something goes awry, but not necessarily scrutineers. They would not know if something had gone wrong, would they, given the complexity of the decryption and encryption process?

Mr SCHMIDT: No, and that is part of the reason we have a number of independent observers involved in the process.

Mr Z.R.F. KIRKUP: Yes.

Mr SCHMIDT: So we have auditors who watch the entire process and an independent academic with their own software which matches or examines the encrypted data to see that it is in fact complete and intact.

Mr Z.R.F. KIRKUP: Is that the same —

Mr SCHMIDT: Yes, just while we are talking —

Mr Z.R.F. KIRKUP: Sorry.

Mr SCHMIDT: Well, just while we are talking about iVote, very quickly just for your information, I might as well say that one of my roles is I am chair of the Electoral Council of Australia and New Zealand's electoral commissioners, ECANZ. Earlier this year we held a meeting where we talked about electronic voting, and unanimously all the Australian commissioners have agreed that we need to work on the basis that electronic voting is going to become a channel in all jurisdictions—not as the channel, but as a channel—and what is driving that is a number of considerations. One of them is for people with low vision, electronic voting of this nature is the only system at the moment which truly enables people to have a secret ballot. Perhaps of more general interest is—I will use the postal service. For people in remote areas and particularly people overseas, postal voting is failing. So we have statistics. Mark, if you could give me the figures for 2015 —

Mr RADCLIFFE: In 2015 we sent out just over 5 800 postal vote packs to overseas addresses, and that accounted for about 129 coming back into the count.

Mr Z.R.F. KIRKUP: Wow.

[10.40 am]

Mr SCHMIDT: All the commissioners have agreed that we need to work together because with economies of scale, interest in cyber security and a whole range of other factors, we are trying to collaboratively, in the coming years, develop a platform for internet voting that could be owned and operated by electoral commissioners and made available to all Australian jurisdictions that want to participate. That is not going to happen tomorrow. We are actively involved in that and Mark is my representative on that process. The last thing I will say, just by way of current developments, is that in May, I think it was, as chair of the council¹ I wrote to all first ministers in Australia—the Prime Minister, Premiers and Chief Ministers—asking that the issue of internet voting and cyber security,

¹ A letter of clarification about this part of the transcript can be accessed on the committee webpage.

plus physical security in a counterterrorism environment, be placed on the COAG agenda. That was driven somewhat by the experience of the US and European elections, but we collectively believe that there needs to be a unified national approach to addressing cyber security and other related issues in relation to internet voting.

Mr A. KRSTICEVIC: Do you do an analysis to see the accuracy—when I say accuracy, you have voting trends, so you can say that in an election, there has been a swing of 12 per cent or whatever it may happen to be. When people do an iVote, can you look at that information to see if that trend is similar to the other trends that are occurring on election day? For example, if there is a 10 per cent swing to the government in terms of the ballots that are cast, can you look at the iVote data and say actually there is a 10 per cent swing the other way from the iVote data and that seems inconsistent and there must be something wrong? Do you actually look at that and say that there is a similar trend as an additional layer of, I suppose, validating what is actually happening?

Mr RADCLIFFE: Yes, we are well aware of that. One of the extra checks, if you will, on the veracity of the results out of iVote is that it represents a certain small percentage of the vote, and clearly if it swung wildly from the voting pattern across the other channels of voting, that would be a red flag to us. We do a lot of different analysis, both during and post the election, to satisfy ourselves that nothing untoward or unexpected has occurred through the election with the electronic voting. One of the things that was observed after 2015—which Antony Green also commented on and that I think everyone is aware of—is that with the upper house ballot, there is a bias to the left. In New South Wales, we have a single upper house ballot for the whole state, so it is about “this” wide, with well over 300 candidates on it. I think we had 24 or 26 groups, plus the Independents, so 27 columns. You always get a bias to the left, but on iVote —

The CHAIRMAN: Just to clarify that, is that a bias to the left-hand side of the voting paper, not a bias in the political sense?

Mr RADCLIFFE: Sorry, we are apolitical here; I had not thought of that! There is a bias towards the left, because typically people will read from the left. When we presented it on the screen, particularly if you have a small screen, the starting point for the upper house ballot was, by default, to the left, and we had a much stronger bias to the left. So immediately afterwards, we commissioned a change from the supplier—this will happen next time we use it, so therefore in 2019—such that it will randomly start the ballot paper anywhere from left to right across, and in that way we should be removing the bias.

Mr SCHMIDT: They also get a message, do they not, before they vote, saying, “You may not have read the entire ballot paper”?

Mr RADCLIFFE: They have that, and lots of red arrows trying to indicate that there was more. We did a lot of user testing, but a lot of people just want to move on once they get to that paper and get out of voting.

Mr KWOK: If I can add to that, post-election we also publish all the preferences for all the ballot papers on the internet, so it is not just during the election that we compare. Also, that is part and parcel of our checking process. Post-election, that is available to each of the parties and the elections analyst and what they can analyse in detail for their purposes.

The CHAIRMAN: Our committee has an interest in your processes around authorisation, registration and distribution of election material, because you seem to have some rules that are different to ours. Do you have set authorisation rules for online materials that are different from those for physical materials?

Mr KWOK: In New South Wales, the regime is that the authorisation² is for materials that are more for distribution and not so much for posters. There are grey areas in terms of what is suitable for distribution in the electronic world. It is really the materials that are to be distributed before the election and during the election that have to be authorised.

The CHAIRMAN: Do you have any limits as to the font sizes that are used for authorisations, for instance?

Mr KWOK: No, we do not at the moment.

The CHAIRMAN: If it is brought to your attention that material is unauthorised, as opposed to some of the sizes, what steps would you ordinarily take to fix that problem?

Mr KWOK: In the first instance, when it is brought to our attention, we would bring that to the attention of the originator, if we can find the originator of the material, and alert them to the issues that they need to address. We also would refer the matter for review of any compliance issues.

Ms BYRNE: The Electoral Commission received powers to investigate and enforce offences under our state elections act at the end of 2014. The 2015 state election and the by-election since have been our first opportunity to look at compliance with the legislation. Our key focus is mostly on deterrence and preventing further breaches, because a lot of the time it is really about a lack of awareness of the laws when it comes to electoral material. We contact the person who is responsible for the material, which more often than not is easy to ascertain, even if it has not been authorised correctly because it is in a newspaper or because of the area it is in and the issues that are being raised. We educate that person. We also take the opportunity to educate the media outlets, particularly in regional areas. We have seen a huge increase in compliance after those efforts. After that, of course, we assess the particular case, depending on facts, and determine what enforcement action is appropriate. Currently in our legislation we can issue warnings or prosecute—there is nothing in between. In the vast majority of cases, we issue warnings, but we have prosecuted in one case, which was unsuccessful. In those serious cases where there is mischief or malice in other areas that would lead to greater criminality, we would pursue prosecution.

Mr SCHMIDT: In the new bill, there is now a specific provision that deals with publication and paid electoral advertisements on the internet and has requirements regarding including publishing the name and address of the person who authorised it et cetera. The challenge of course—this is true of all state governments—is regulation of what appears on the internet and successfully taking any enforcement action against people who are doing the wrong thing. The view of the commission, and I think of other Australian commissioners, has been for some time now that this ultimately requires a coordinated national approach because we have limitations in our legislative reach to start with, but also just the sheer practicality of taking action in those circumstances can be very challenging.

The CHAIRMAN: You have a process in relation to the registration of materials. Do you experience any administrative issues in relation to the registration of materials; and, conversely, do participants in elections find it overly onerous?

[10.50 am]

Mr KWOK: In 2015, we introduced an online system to facilitate the registration of electoral materials. That system has proven to certainly reduce the administrative burden, as well as providing a better service for the participants in the process. I think it has increased the level of compliance, as well as more efficiently processing the registration of those materials. That has been successfully improved in the recent local government elections and we will be looking at continuing

² A letter of clarification about this part of the transcript can be accessed on the committee webpage.

to use this system for upcoming state general elections. Certainly given the time frame and given the compliance requirements, I think having an online system would improve the level of service for the participants.

The CHAIRMAN: Once material is registered, can anyone access it online or do you have to inspect it at some premises?

Mr KWOK: The current legislation requires us to produce a hard copy of the election materials that are available in our returning officer's office. Under the new bill, however, we would be able to provide the registered materials online via the internet, and I think that is a better outcome.

The CHAIRMAN: From a procedural point of view, if you find that unregistered material is being distributed and that is brought to your attention either on polling day or before polling day, what do you do? How do you deal with that as a commission? Do you have sufficient powers to deal with it?

Mr KWOK: I will probably defer to Alison to answer that because I think we have introduced a number of initiatives to improve the regulations and enforcement of those noncompliance issues.

Ms BYRNE: On election day, we have recently in the by-elections trialled having inspectors go out to areas that have been deemed to be more at-risk areas in particular campaigns. We do not have enough staff, obviously, to do that for a general election, and for wide regional areas; they cannot cover the entire distance of the electorate, so that is why we apply a risk-based methodology. That has been really successful in terms of unregistered material on polling day. The guys have copies of all the registered materials. They introduce themselves to workers on the day—the ROs, polling place managers, local area commanders, with the police—so there is an awareness that they are there and around, and they receive allegations on the day around electoral material either being unregistered or unauthorised, and they are able to respond on the spot, and in doing so either the material is not distributed further or a miscommunication or a misunderstanding is clarified on the spot.

Mr SCHMIDT: That also provides an opportunity for the inspectors to obtain evidence. Also, if it is felt necessary, all of these matters are reviewed post the election, and if there was a particular issue that warranted it, further action would be taken potentially against the people who were doing the wrong thing.

Ms BYRNE: That is correct. Prior to election day, if it was unlawful for some other reason, our inspectors are able to gather evidence either by going out to the area or contacting the person who has made the referral, or the media if it has been addressed in a media report, and gather that evidence, again to, firstly, try to stop the breach and, secondly, to determine if, and what, appropriate enforcement action should be taken.

Mr SCHMIDT: If I can just add one thing, part of the reason for doing this is my expectation of my returning officers and electoral officials on the day is to run the election in the polling place. They have enough to do in servicing the electors and ensuring the smooth running of the process without having to go outside the premises and trying to deal with overenthusiastic volunteers or people who may be trying to do the wrong thing. Having these inspectors available frees up the electoral officials so that they can concentrate on running the poll. However, as Alison pointed out, just by the very nature, we have enough problems with our physical size—Western Australia is in the same order of magnitude—that if you are having a general election, you will never have enough staff to be able to provide that service across the board. That is not a reasonable expectation for government to resource that, but we can do a risk-based approach to try to target those areas where we believe there may be particular issues.

The CHAIRMAN: In relation to pre-polling, at your pre-poll or early voting centres you do not allow canvassing for votes and you do not allow volunteers to distribute materials or display posters. What opportunity is there for political parties to provide their how-to-vote cards at pre-poll centres?

Mr KWOK: Distribution of materials is available.

Mr SCHMIDT: That does happen in New South Wales.

The CHAIRMAN: So, you do allow it?

Mr KWOK: Yes.

The CHAIRMAN: Okay. I was under a misapprehension. So we will not worry about that.

Mr SCHMIDT: The misapprehension might be that the material that is handed out—the requirement under our legislation in relation to handed out material having to be registered is on election day. The material they hand out any time prior to election day does not have to be registered.

Mr KWOK: It does need to be authorised, though.

The CHAIRMAN: Okay. Do you find there is a difference in the types of materials that are used?

Mr KWOK: Not really. They tend to introduce very similar materials for distribution between pre-poll and on election day.

The CHAIRMAN: What was the background to the limitation on the size of posters that can be displayed at polling booths on election day?

Mr KWOK: I cannot remember. There is a limit in size of 200 square centimetres or something like that. There is a limitation on the distance between the posters and the polling place. There are no provisions in terms of the size of the —³

Mr SCHMIDT: I am not sure of the history—one of my colleagues might know—but I presume it is because on the day for that close proximity display, there is always the possibility that an enthusiastic party would get there early and completely dominate, as it were, the space. So they can do that further afield, but the closest proximity is within six metres of the polling place and the fences that relate to that.

Mr KWOK: That would be correct.

Mr SCHMIDT: That gives everybody an opportunity to put up some material, and even then there can be issues about putting up a series of placards of exactly the same size and trying to cover the field, but that is the nature of the game.

Mr D.T. PUNCH: I would like to explore funding issues with you. How do you monitor and enforce caps on electoral donations and electoral communication expenditure?

Ms BYRNE: Firstly, the system that we currently operate under is an annual disclosure period. The disclosure period runs on a financial year basis. Participants and donors must lodge a disclosure with the Electoral Commission, for participants by 22 September each year, so in the next disclosure period, and for donors by 20 October. We do not receive real-time disclosures of donations or expenditure. When we receive those disclosures, we reconcile the various data. We reconcile the donor disclosures with the recipient disclosures. We reconcile also the disclosures with claims for funding to ensure that disclosures, say, for election campaign funding in an election year and the disclosures of what electoral expenditure was incurred for the purpose of being reimbursed, matches the disclosures of electoral expenditure for the purpose of the declaration of disclosures on an annual basis. Also with disclosures, we receive copies of vouching—this is all under the

³ A letter of clarification about this part of the transcript can be accessed on the committee webpage.

provisions of the act and regulations—and copies of the annual financial statements, ledgers, statements from banking institutions and the like. We use that information to trace the money, if you will, for parties, candidates, elected members, third party campaigners and groups to ensure that money going in matches money going out. What is provided with the disclosures is very important to ensure that there are no breaches of caps on donations and expenditure. But on top of disclosures and the disclosures for claims to public funding, we also have referrals from other stakeholders, so other electoral participants, the media and the community at large. People looking at disclosures from other electoral jurisdictions often raise issues with us to investigate or review. Finally, we do get self-referrals, where participants refer to the Electoral Commission matters where they have accidentally breached caps.

Mr D.T. PUNCH: That is certainly a very thorough process. How do you deal with the discrepancies that emerge out of that?

[11.00 am]

Ms BYRNE: It depends on the discrepancy. We conduct a risk-based audit and we look at the particular stakeholders, stratify them according to the risk, taking into account their antecedents, the type of stakeholder, their professional controls and governance and so forth and other things to create a risk profile. Depending on that risk profile, we look at certain features of the disclosure and if there are errors or anomalies that pop up, then of course we expand the review of that particular disclosure. If there are things where there is one missing receipt or 10 missing receipts amongst 5 000—you know, petrol on one day or \$100 here or \$100 there—we always have a referral process back to the party or the candidate to say, “This is where you’ve missed something”, or, “This is where you can improve in the future”, but we would not necessarily elevate that to a compliance action. On the other hand, if one receipt was missing but it was for a \$50 000 bill to print electoral communication material and they were close to their electoral expenditure cap, well then of course that is far more important and we would elevate that to compliance. My audit team work very closely with the investigation team as these disclosures go on, to ensure that they are looking at it at the same time as the auditors and following up different things. The other function the Electoral Commission has, of course, is to pursue the recovery of unlawful donations. There are time limits around that, hence why the investigators and auditors, when receiving those annual disclosures, work together to look at those discrepancies as soon as possible.

Mr D.T. PUNCH: Have you ever had to take compliance or punitive action against a party or someone who has either failed to disclose on time, or there is a major discrepancy?

Ms BYRNE: Yes. The action that we take spans either criminal, civil or perhaps administrative action. We have previously withheld public funding from political parties on the basis that they have failed to disclose. Under our legislation, if you fail to disclose your annual declaration or to include your annual audited financial statements with your declaration, you are not eligible for public funding. A number of political parties have had their public funding withheld on that basis. We have also pursued a political party last year and candidates for failing to disclose donations in the 2011 state election, and we recovered from the party, the candidates and a former elected member’s campaign manager in excess of \$670 000 of unlawful donations.

Mr D.T. PUNCH: To clarify, in terms of undertaking that, do you have any major administrative difficulties associated with it?

Ms BYRNE: Sorry, was that administrative?

Mr D.T. PUNCH: Yes. In terms of the compliance regime that you have—the audit process—do you have any administrative difficulties associated with administering that?

Ms BYRNE: Yes. I think the most significant difficulty is that it is a paper-based system at the moment. In an election year we can receive anywhere from a quarter of a tonne of paper upwards. All the vouching, all the invoices are via paper. Firstly, our stakeholders do not like carting in all that paper to the Electoral Commission, but then of course we audit a paper file. We have systems in the Electoral Commission of course to retain that data and build that intelligence up and ensure that we are complying with the financial records and records management act, but to look at these disclosures we do work off the paper, which is quite a complicated and long process in an election event year.

Mr SCHMIDT: Just to talk about the future, we have been given funding to develop or procure an online funding disclosure regime. One of the great advantages of that for political participants is, of course, as anybody who has done online tax returns or filled out other online forms knows, that it enables you to prompt the party or the official who is filling it in to comply and put in a form which is comprehensive, because obviously sometimes there are issues with what we receive which may just be administrative error, but because it is paper they have to go back, they had to come back in again; whereas on online system assists us in getting accurate data, but also it will greatly assist the parties themselves to comply with their obligations.

Ms BYRNE: Definitely.

Mr D.T. PUNCH: Would that enable you to move into real-time management? You mentioned that earlier.

Ms BYRNE: If the legislation changes. Currently the legislation, as I said, requires disclosure on an annual basis. But if the legislation was to change, an online system would of course facilitate real-time disclosure. The current paper-based system would be make it extremely difficult to obviously lodge those paper-based forms in real time, and extremely difficult for the Electoral Commission to publish that data in real time. That would be the real issue. We have the information, but the public would not be able to see it until we data entered it.

Mr SCHMIDT: Just for completeness on that, the legislation we are talking about there—obviously this is not the electoral bill, which deals with the processes for elections; it is funding and disclosure legislation, and the government has been examining possible reforms in light of parliamentary committee recommendations and another inquiry, which was the —

Ms BYRNE: Panel of experts political donations inquiry from 2014.

Mr D.T. PUNCH: Thank you very much.

The CHAIRMAN: The member for Carine.

Mr A. KRSTICEVIC: Thank you very much. I actually want to go back to pre-poll and just get a picture and an idea of how it actually works over there—so days, hours, opening, the amount of people who go through, the materials on the day that are available, how that is managed. I want just a picture of how yours works, whether it is weekends—just that sort of stuff. If you can just give me a bit of a picture of that.

Mr KWOK: In New South Wales there are 93 electoral districts for the state during the elections. Our pre-poll period is two weeks before polling day, and we would have at least one pre-poll office that operates for that period, including the Saturday prior to polling day. As part of our planning, we undertake a detailed level of analysis to identify suitable venues. Obviously it has to be a place that is convenient to potential electors, as well as for materials and it also needs to be in a secure area. I do not have the exact figures in terms of how many pre-poll offices that we would have, but I think on average we probably would have about—I would have to come back to you on that. Typically we would have about 300 or so pre-poll locations available statewide during that period

of time. Not all of them necessarily open for the whole 11 days; that depends, again, on our projected turnout. Pre-poll in New South Wales certainly has been trending upwards quite significantly. It is just, I guess, a reflection of the demographics and the lifestyle of the electorate in general. So we have to, obviously, increasingly provide the necessary service in terms of materials, staffing and systems to ensure that the people are provided with the service. We would tend to have the maximum number of pre-poll stations available especially for the last two to three days, but that tends to be the peak period of time. In addition, we also have Sydney Town Hall, which also provides pre-poll as well. That is a polling place where all 93—it is basically our largest polling place available in the centre of Sydney. So during that time all the electors are marked off electronically. Rather than using a paper-based authorised roll, they are able to have their name marked off through the electronic system. That will of course require every pre-poll office connected to our systems and our service centrally. Does that answer the question?

Mr A. KRSTICEVIC: Yes. You said Monday to Friday, the last Saturday before the election; is it nine to five? What are the hours as well?

[11.10 am]

Mr KWOK: Generally it is nine to five, but subject to, of course, whether some venues may have some restriction—for example, if it happens to be in a council chamber; they may have different office hours. But we are paying to follow the usual office hours—nine to five. We also provide a late opening on the Thursday prior to the election day as well, where we have an extended late opening. I think it is about eight or nine o'clock, depending again on the venues. So, in general, the normal office hours to some extent appear.

Mr A. KRSTICEVIC: You said 300; did you say you had one early polling place per district or per seat?

Mr KWOK: At a minimum per electorate, yes; so, we tend to have about three. Also, in 2015, we had a redistribution of the electoral boundaries. Obviously, given that the boundaries have changed, we also recognise that there may be some confusion out there as to where the district that they believed were previously enrolled in may happen to be a different district. So we have during that time implemented some of the pre-poll locations that provides ordinary voting for more than one district—what we call the “multi pre-poll”, just so the electors who turn up to a district, thinking that they are able to vote ordinarily when the boundaries have changed. That is another service that we have provided.

Mr A. KRSTICEVIC: I have one last question. With early voting, obviously, that is done to make it easier for people to vote who cannot vote on the day. I have always wondered why it is nine to five because that is generally when most people work. This is when they cannot get to a polling station during a Monday to Friday, and if they cannot come on a Saturday. You did say that you had the one Thursday that is late. Is there any consensus out there that you need to be staying open later, adjusting your hours, so that people who cannot come during work hours or on the weekend can attend? How does it work with shift workers and fly in, fly out workers?

Mr KWOK: I think it is important to note that the pre-poll is not necessarily under the legislation. When I say for convenience, they do need to provide reasons for why they are not able to vote on the election day in order to be eligible for pre-poll. They need to state their reason prior to being eligible for pre-poll. Having said that, I think we have not had any feedback as far as the demand for further opening hours in our pre-poll. I guess the demographic is probably slightly different. We certainly do not have a lot of fly in, fly out—type of people. People tend to find that—and often there are certain areas we can look at: for example, from eight to six, if the venue allows that. That is something that we could accommodate. But, certainly, there has not been feedback to us that opening beyond those sorts of hours that has been identified to be in demand.

The CHAIRMAN: I have witnessed some of your elections, and particularly you have that unique situation of the town hall polling booth; it seems to be all things to all people. It is a sight to behold, really. But time is very, very quickly eluding us and there are some issues that we need to address. Firstly, very quickly, how many people do you have in your compliance and investigation team, if you are able to tell us? If not, you might be able to take that on notice.

Ms BYRNE: We have a base team of about 28 to 30 people, but during a disclosure period we will increase by six to 10 for data entry. We also increase for projects, either backfilling subject matter, experts or adding on people with certain subject matter expertise. So we flex from about 30 to 50, depending on projects and the time of year. But that is across the whole scheme.

The CHAIRMAN: In relation to how you review your performance, how do you do that in relation to the management and administration of the state election?

Mr SCHMIDT: With any election, as a matter of course, we conduct a post-implementation review. So that means, be it just a by-election or the whole election itself, we go through a continual improvement process. During the course of the event, notations are made of issues that have arisen, which are recorded. Then post the event, when things are a bit calmer, there is a methodical way of going through of that to identify improvements that could be made. We do not endeavour to identify rigid performance indicators as such. People might ask why we do not have an indicator to see how quickly you declare the result of a poll. We do not believe that that is a practical thing to do, because polls are declared as quickly as they can in the individual circumstances of each case.

The CHAIRMAN: You also have some reference groups. You have an Aboriginal and Torres Strait Islander reference group, a CALD reference group, and a disability reference group. Can you explain how they work, and perhaps also whether they are permanent groups with a rotating membership, or whether they are groups that are brought together just simply in the period around an election?

Mr KWOK: We generally establish these reference groups up to 18 months before a major election event. Through the consultation period, with this reference group—made up of the key stakeholders in each of the respective communities, if you like—a set of action plans are developed to ensure that the guidance with the feedback from these reference groups have sufficient time for us to be prepared in our plan, in terms of staffing, in terms of our materials and assisting instruction sheets et cetera, so that we can have them implemented and in place to carry them out. After the election, we would then review what we have implemented against these action plans. So it is revolving, but there is a bit of time where we spend with these groups, develop action plans for the implementation. After the election, we then review what we have done; and, of course, have continuous improvement opportunities. I note that iVote, for example, is only one that particular groups that represent people with disabilities have been very vocal and very supportive of in general.

Mr RADCLIFFE: Yes, we have engaged with them directly around iVote, particularly Vision Australia, Blind Citizens Australia and other disability groups.

The CHAIRMAN: Time has eluded us. We really appreciate the time you have made available to us today. I think we have gained a lot as a committee and also there is a lot that can inform the Western Australian process from the work that you do, so we really appreciate you making that time. If you do not mind, if we do have some questions afterwards, we may correspond with you, if that is okay with you, commissioner?

Mr SCHMIDT: Absolutely; that is fine.

The CHAIRMAN: Formally now, thank you for your evidence before the committee today. A transcript of the hearing will be forwarded to you for correction of minor errors. Any such

corrections need to be made within 10 working days. If you do not return the transcript in that time, we will deem it to be correct and publish it. You cannot introduce new or extraneous material as part of that corrections process so that it does not change the sense of your evidence in any way. But, of course, you are always welcome to provide any additional information or elaborate on any points that you have made if you think it is going to be useful to us. We would always welcome that input. I thank you for your time today, and wish you all the best in your finalising the by-elections that you have had over the last couple of weeks and in the rest of your work in the next few years.

Mr SCHMIDT: Thank you, and we do appreciate you chatting to us. I genuinely believe that this sort of communication between jurisdictions is vital for the future development of our electoral systems. There is a commonality of interest, particularly with technology development, not only in iVote, but just in online disclosures and electronic mark-off. There are great possibilities for economies of scale and mutual development of technology, which we are happy to participate in any ideas in that space.

The CHAIRMAN: Thank you very much.

Hearing concluded at 11.20 am
