

REPORT ON PROCEEDINGS BEFORE

**JOINT STANDING COMMITTEE ON ELECTORAL
MATTERS**

**INQUIRY INTO PROPOSALS TO INCREASE VOTER
ENGAGEMENT, PARTICIPATION AND CONFIDENCE**

At Macquarie Room, Parliament House, Sydney on Monday 17 March 2025

The Committee met at 9:05 am

PRESENT

The Hon. Peter Primrose (Chair)

Legislative Council

The Hon. Robert Borsak (Deputy Chair)

The Hon. Chris Rath

The Hon. Nichole Overall

Legislative Assembly

Mr Stephen Bali

Mr Tim James

Mr Nathan Hagarty

PRESENT VIA VIDEOCONFERENCE

The Hon. Bob Nanva

Ms Cate Faehrmann

The CHAIR: Before we start, I acknowledge the Gadigal people, who are the traditional custodians of the land we're meeting on here at Parliament. I also pay my respects to Elders, past and present, of the Eora nation, and extend that respect to other Aboriginal and Torres Strait Islander people who are present here or watching proceedings online. Welcome to the third hearing for the Joint Standing Committee on Electoral Matters inquiry into proposals to increase voter engagement, participation and confidence. My name is Peter Primrose. I'm Committee Chair. I'm joined by my colleagues Deputy Chair the Hon. Robert Borsak, Mr Stephen Bali, Mr Tim James, the Hon. Chris Rath and Ms Cate Faehrmann. The Hon. Bob Nanva is joining us via video conference and other members will be joining us later today. We thank the witnesses who are appearing before us today and the stakeholders who have made written submissions. We appreciate your input into this inquiry.

The Hon. JOHN HATZISTERGOS, AM, Chief Commissioner, Independent Commission Against Corruption, before the Committee via videoconference, affirmed and examined

The CHAIR: Please note that Committee staff will be taking photos and videos today. These will be used for social media and public engagement purposes on the Legislative Assembly's social media pages and websites. Please inform the Committee staff if you object to having photos and videos taken. Before we start, Commissioner, can I just check if you have any questions about the hearing process?

JOHN HATZISTERGOS: No, Mr Chairman. Thank you for taking the time to do it at this difficult part of the day and thank you also for allowing me to appear remotely. It's a very busy time.

The CHAIR: We really are very grateful for you taking the time to appear. Would you like to make a short opening statement before we begin the questions?

JOHN HATZISTERGOS: No, Mr Chairman, I'm happy to respond to any question that the Committee has.

The CHAIR: In your view, which of the outstanding policy recommendations from Operation Aero should be addressed as a priority?

JOHN HATZISTERGOS: I think the one that we're mostly concerned about relates to party governance, which has been outstanding now for some time. I did go through the chronology of events since the Aero report was handed down: the report that was handed down in 2014 by the commission that followed Aero; the Schott review; the review that was done by the parliamentary committee; Operation Spicer; the decision which was taken to leave it to the Electoral Commission to produce some guidelines, which we believe have not resulted in a satisfactory response; and the position where we are now, which effectively is that over 10 years has passed and we've just not seen any progress as far as that is concerned.

We detailed in our submission the sorts of issues we'd like any proposed changes to address, and that it really will ultimately be a matter for the Electoral Commission to determine whether or not a political party's governance is such that enables it to certify the release of administrative funding. At the moment, it's unconditional. The one complicating factor, however, as far as that recommendation is concerned, is that the Federal legislation, which has recently been passed, gives administrative funding to political parties but makes that effectively unconditional. So it hasn't addressed the issue of party governance at all.

The CHAIR: Just following on from that—

JOHN HATZISTERGOS: Sorry, the only other issue that I should just highlight is that the Schott review did recommend—quite sensibly, in my view—for some synchronisation of the electoral donation regime between State and Federal. That was, I understand it, put on the agenda for COAG, as it was then known; however, it was never advanced. As is apparent from the legislation which has recently been enacted by the Federal Parliament, there's been no attempt, in my view, to engage with States, either on a consultative basis—certainly not that I'm aware of—or in terms of the legislation. The various caps and disclosure requirements differ. I appreciate that it's difficult to do this across a number of different jurisdictions but there was no attempt to engage with people to try and marry it up. Obviously, there was an agreement reached at a political level as to how to proceed, and that ultimately has resulted in a piece of legislation which a number of people have passed comment on, but it still gives rise to some unsatisfactory features, in our view.

The CHAIR: You've actually been prescient, because that was my next question in relation to the risks of those inconsistencies. Is there anything else you'd like to say about that?

JOHN HATZISTERGOS: No. We have done a comparative analysis of the New South Wales laws and the Federal election laws, and I'm happy to supply the Committee with that table, which identifies the various differences. Obviously, the most significant from our perspective is that New South Wales does have a number of prohibited donors. The only prohibited donors that the Federal legislation embraces is foreign donors. For example, you still have this issue with property developers, which is something which the High Court has upheld, but there still is a capacity to go to the Federal campaign account and deposit money, as has occurred during Operation Tolosa involving the former mayor of Canada Bay who resigned to contest the Federal seat of Reid for the Labor Party.

There was a number of donations. They're documented on page 124 of our report in Tolosa. Then, after that—after contesting, I think, the election in 2016, 2017—he got back onto the council and didn't make declarations in relation to the campaign donations that he had received from the developer interests. That issue still remains unaddressed. We've suggested in Tolosa that there may be some changes that can be done at the local government level to address that, but it certainly has not been addressed at the Federal level.

The CHAIR: I think the Committee would be grateful to receive a copy of that list of comparisons.

JOHN HATZISTERGOS: I'll raise that to be forwarded to the secretariat, Mr Primrose.

Ms CATE FAEHRMANN: Thanks for appearing today. Just continuing on, in terms of what you were saying about the one thing that's kind of lagging behind is parties improving their governance, we know that parties are structured differently, and a one-size-fits-all model would not be constructive or effective. What types of internal controls and systems should political parties be required to have, regardless of their size, structure and resources?

JOHN HATZISTERGOS: This issue is addressed partly in our submission, but it's also addressed more substantially in one of the other submissions that you have from the Associate Professor Yee-Fui Ng, who deals with that. In our Operation Aero report, we indicated the kinds of governance controls and standards which would be appropriate: accounting and receipting of banking donations—this is quite chaotic in the case of Aero; the party officials conceded that—the organisation of fundraising events, the identification of prohibited donors and donations that exceed statutory caps, the roles and responsibilities of staff and volunteers, risk management and internal audit, whistleblowing and complaint handling, management of gifts and conflicts of interest, and compliance and ethical obligations of senior party officials. We kept it at that. We suggested that a working party be developed or constituted to address that.

Obviously, there are—as you rightly point out—differences in the way parties are structured. Some are obviously not incorporated and some are. We weren't suggesting that, for example, in the area of policy and policy development, there be some sort of uniform governance structure or that there be any internal controls in relation to matters such as preselections and matters of that kind. They're not the sorts of things we're concerned about, but the areas that we've identified are areas common across all political outfits where we think that there could be improvements.

Mr TIM JAMES: Thank you, Commissioner, for being with us today. It's been over three years since those recommendations of Operation Aero and, I think—correct me if I'm wrong—10 years since the conduct and/or donations investigated. What do you say about that timeline?

JOHN HATZISTERGOS: I have to be fair; a number of recommendations have been implemented, principally by the previous Government and, to some extent, by the new Government that was elected two years ago. But the one in relation to party governance, I recognise it's difficult. I do think it's important. I mean, there's no point in having prohibitions on developer donations when they're just being subverted. I think I identified at the last hearing that I gave evidence—the evidence of the previous general secretary of the Labor Party, Sam Dastyari, who said, "We just tell them to go to the Federal account. If a developer wants to put more money in than what the cap is, we just tell them to go to the Federal campaign account." I mean, it's a fairly frank concession as to how Labor felt they could work around it. We also saw the workarounds in Operation Spicer.

If this is an issue that concerns the State Government so much that it wants to ban developer donations, then finding loopholes and working through those loopholes is not addressing the substantive issue. Obviously, there needs to be some cultural change. We've suggested a mechanism of doing it. It's been 10 years, and nothing's happened, so what can I say? It's been over 10 years in some instances. I do know the Labor Party has put in a submission to your Committee that supports it now. I don't know what the position of other parties is, but at least we've got some progress as far as they're concerned.

Mr TIM JAMES: Yes, noted. In terms of the State-Commonwealth gap, as you referred to it in your submission, is part of the challenge that not all States and Territories have prohibited developer donations?

JOHN HATZISTERGOS: I don't know that it would stop some action being taken in New South Wales, but three jurisdictions do ban it. I think it's the ACT, Queensland and New South Wales who ban developer donations. The other jurisdictions don't, although South Australia is moving to a model where there will be no donations. That's new legislation that they have passed in relation to established parties in particular, so I suppose you can add them de facto into the scheme. I think with the Federal people, the conversations I've had with Ministers in the past has been along the lines of "We do not regulate land use, and therefore we don't need to ban developer donations." I think that's their general response.

In relation to some of the other jurisdictions, they may not have the same property market that New South Wales does. I don't know; I can't account for their positions. But obviously you have a problem, as was identified in Tolosa, where a Federal candidate goes around and receives donations for an ongoing development which he had been involved in when he was the mayor, then contests a Federal seat, then gets donations from the developer interests and then goes back to the council, and there's no declarations made. I mean, what's the purpose of having these sorts of provisions into account if people are just going to bypass them?

Mr TIM JAMES: Do you say that it could be adequately regulated at a State level if New South Wales adopted recommendations and took such reform action as has been suggested, or is it your position that you have to have a common aligned position across the whole nation, bringing in all the jurisdictions?

JOHN HATZISTERGOS: I don't think you need to have a common aligned position to make meaningful progress in New South Wales. I think if you have a greater level of conformity across jurisdictions it would be better, but at the moment—I mean, my comment about having some coordination with the Federal level wasn't just relating to this issue of developer donations. It was more broad. It was about disclosure requirements, caps and a whole range of other things which exist, which at the moment are variable. I mentioned one earlier in my submission. The administrative funding which is going to be granted at the Federal level is not tied. We're suggesting in our submission that the administrative funding which goes to political parties is tied to some basic governance standards.

Mr TIM JAMES: Thank you. Can I move on to a different area also in your submission, which is candidate screening. I can't disagree with what you've said, which is:

Voter confidence in the electoral process would be enhanced if political parties adopted robust candidate screening procedures and chose to be transparent about those procedures.

What should they look like? Is there a sense or outline for what those procedures should be and how that transparency should work?

JOHN HATZISTERGOS: I think political parties have their own screening procedures. I understand both Liberal and Labor do. I'm not sure about the other parties. The level of disclosure and the level of intrusiveness is a matter for them, fundamentally. I think it could improve the offering that the relevant parties put up, but I don't necessarily need to go into the detail. Obviously, some parties are much more intrusive than others, particularly in relation to matters such as transgressions that they may have been involved in, disciplinary matters and matters of that nature, but fundamentally they're matters for political parties, ultimately.

Mr TIM JAMES: Do you say that there should be some sort of consistent baseline position? There might be differences, of course, as between parties in terms of how thorough or otherwise they might wish to be, but do you say there should at least be some public requirement and/or obligation that they go about such screening and be transparent about it?

JOHN HATZISTERGOS: The only requirement that at the moment part of the law relates to is an issue of children, I think. Offences relating to children, I think, is the only requirement that is in the law. I have to check it. I'm not suggesting anything prescriptive, but I would suggest it would simply enhance the candidate screening process if those candidates had some sort of screening mechanism. As I indicated to you, a couple of the parties already do it, but it's not something that is at the forefront of my thinking.

There are issues around candidate selection, which I think you people in the political parties would know much better than I would, which would enhance integrity: their connections, their offending past, if there is any, and relevant matters which might assist in determining if a candidate is a person worthy of nomination or not. They're not really at the forefront of my view in relation to how you go about this. It's reputational issues for the political parties themselves. Regularly we see candidates who aren't screened who end up not making it to the line of the election because something's exposed and then the candidate is withdrawn. It's just something that you may wish to address at an earlier stage.

The Hon. ROBERT BORSAK: Commissioner, how do you see this sort of mandating of this type of rules? Do you see it coming into the law or do you just see it as something that should be recommended and done? I'm looking at it from the minor party point of view, which leaves us in a situation, for example, if it became too mandated and too strong, would be very hard for us to comply with because of the cost of running a situation like that.

JOHN HATZISTERGOS: I would look at it simply from the perspective of there being standards that you meet, and then it would be a matter for the Electoral Commission as to whether it would advance the funding, assuming you meet a—I'm certainly not suggesting that the various standards; let me just roll back a bit. One of the things we've recommended is conflicts of interest in relation to senior office holders. If you have provisions that deal with that matter, that would be satisfactory. The enforcement of it is a matter for the political party; it wouldn't be a matter for the Electoral Commission. As long as you had the appropriate standards in place, how you go about recognising that in practice would be a matter for the political party.

The Hon. ROBERT BORSAK: But how would that reflect itself in the law? If it's not there somewhere, then political parties have a bit of a history of ignoring what is good practice.

JOHN HATZISTERGOS: In another committee, I was asked questions about potential conflicts of interest with political parties in the advancements of promises, and I pointed out that there are no codes of conduct that deal with advancement of promises for candidates at election time. There are no standards at all, and we're not suggesting you necessarily go down as far as that is concerned, but what arose in Operation Aero was that donations were being sought from donors for essentially private purposes. One of them was to deal with someone's private legal costs. That was sought, and he used his position to seek that donation.

This was a person who was an aspirant for political office down the track. We thought that that sort of thing is something that the political party may take an interest to deal with, and then it would be a matter for the political party to actually police it and to enforce it as it saw fit, but it wouldn't be a matter that the Electoral Commission would act as some sort of a penal body as to whether it was properly enforced. In other words, you'd have the standards. It would be a matter for you to actually enforce those standards within your organisation. Do you follow what I'm saying?

The Hon. ROBERT BORSAK: Yes, I do. Just following on from that then, how do you then bring the commission's obligations in terms of audit in—from personal experience, certainly in the last few years, they haven't been too active in the audit side of things.

JOHN HATZISTERGOS: No. Well, they would have to do that. There are obviously some complexities involved which suggest that a working party be established to deal with some of those complexities. Most of the thing that we want addressed in the governance standards really relates to party financing. We do not really want to get involved in the questions of internal governance, particularly policy development and candidate selection and internal disciplinary matters. They're really matters for political parties.

Mr STEPHEN BALI: Thank you, Commissioner, for your attendance and your insightful presentation. Just looking at what you were saying—and quoting Sam Dastyari. I've got to say he was a colourful character, but we've had three general secretaries of the ALP since. There have been substantial changes, as far as I know, that even—it's more on a rare occurrence that the State Labor Party will accept developer donation even for Federal candidates. So we have a more accurate live or annual report, should there be some type of shorter, crisper report that identifies categories? What goes on the Electoral Commission's website is a lot of detail, and the average voter won't have time to go through it all. Should there be some type of summary of the governance that each party has undertaken in the last 12 months, or some type of framework—a series of questions that is posed that they need to respond to, to show that there is change or what is happening in the political party?

JOHN HATZISTERGOS: Operation Aero came out in 2022. That was Chinese Friends of Labor. After that, we had our own report which came out the year after that, I think it was. Then we had Operation Spicer, and then we've had Operation Tolosa. So these issues keep coming up. We had Aero, which was the Chinese Friends of Labor. It was a commission investigation, a referral from the Electoral Commission. Then we had the issue with Spicer, which was a diversion of money into a third-party account and the filtering it back to the Liberal Party involving, again, the developer donations. Then we've had Tolosa, which I've explained. So these issues just keep coming up.

I'm pleased to see that the Labor Party is actually supporting some governance reform. It's Mr Ofner, who I've never met and I don't recall him, that's put a submission supporting the recommendation of the commission. So if we can establish a working party and get it together, we can make some progress in this space. At the moment, simply saying we'll leave it up to parties, I'm not sure that that's worked. The recommendation that came out of the electoral matters committee in the last Parliament was, "Let's establish some guidelines. Let's have some guidelines." We then see two further reports that the commission has been involved in, which has shown how people get around these things.

Mr STEPHEN BALI: You were talking about the candidates being vetted better by political parties, but given the rise of Independents, or some people like myself who call them "self-interest", where there is no vetting just to nominate—if political parties have to vet, shouldn't there be some consideration or discussion on looking at vetting candidates in general who put their hand up for elections?

JOHN HATZISTERGOS: We haven't gone that far. Obviously, political parties have a level of sophistication. It's variable. I don't know that the commission really wants to get involved in that argument. That's really a matter for the political parties and ultimately for the electorate who determines whether someone's suitable or not, but I would've thought that it's in most sophisticated political parties' interests to make sure that the candidates that they put forward are appropriately vetted and will represent the interests of their party in a positive way.

Mr STEPHEN BALI: I agree, and the parties, hopefully, are improving their processes, but Independents are running and some of them are receiving large donations—some of them small. They're running

for councils, which have some development interests. We know that some of them do get elected to council, because not everything is put in public domain, I suppose, when they're running until afterwards to find out where people are linked to. So that's why I'm just suggesting putting political parties to one side, because they, as you've said and everyone recognises, have a vested interest in making sure they've got good candidates and they have the systems to vet candidates, but should there be a minimum standard for people nominating to run for office?

JOHN HATZISTERGOS: What, as part of the electoral law?

Mr STEPHEN BALI: Yes.

JOHN HATZISTERGOS: I'm not sure what minimum standards you're suggesting, and I think that could be very subjective. I'm not sure how it will operate constitutionally either. If the electorate choose to vote for someone, notwithstanding a past which may be viewed as unfavourable in the eyes of many, that's a matter for the electorate. I think you've had some experience of this in the past in New South Wales, with people who—some people might be critical of their past but they've nevertheless been elected. That's democracy.

The Hon. BOB NANVA: Thank you for your time, Commissioner. In relation to the objectives of Operation Aero and tying administrative funding to better governance standards in political parties, one of the steps that was undertaken by the Labor Party in light of the Chinese Friends of Labor scandal was to separate financial decision-making processes within the party from political decision-making processes, because one would often imbue the other. Do you think that structural separation in decision-making bodies within political parties might go some way to promoting the objectives from those recommendations in Operation Aero?

JOHN HATZISTERGOS: I'm not familiar with that aspect of what the Labor Party has done, but if you tell me that's what has occurred, that's positive. Generally speaking in New South Wales, however, I think the caps on donations have worked well in terms of limiting the capacity for influence of donors. The fact that it's exposed and publicised and the thresholds are fairly low, I think all of this has contributed to a greater level of transparency and accountability as far as that is concerned. I did express some reservations at the last committee hearing about lengthening the list of prohibited donors. I think that's got problems. Two of the attempts to limit the influence of unions in New South Wales were held unconstitutional by the High Court. The circumstances in which the developer donations ban was upheld by the High Court in McCloy and in the Queensland case of Spence really reflect on the particular circumstances that applied to developer donations.

One of the things, for example, that in McCloy the High Court made particular mention of was the number of cases which the commission had investigated which involved developer donations and an adverse impact on the public interest. That was seen as a critical feature of why the High Court held that the ban on developer donations was appropriate. I'm not sure, and I make no comment, as to whether all of those groups that are listed as developer donations are in the same or analogous category. Obviously, a judgement has been made that they are. We've not investigated a number of those other industries that are linked there. It may be that the High Court takes a different position. I don't know. But at the moment, that is the law. That's what is in force until the High Court tells us otherwise. But the other reforms that have been done, I think, have been positive. If political parties, such as the Labor Party, have taken internal action themselves to further distance policy-making from donations, again that can be very positive.

The CHAIR: I have some questions, but do any other members have any further questions? Mr Deputy Chair?

The Hon. ROBERT BORSAK: Commissioner, back in 2021, ICAC did an inquiry into lobbyists and lobbying practices in the public sector in New South Wales and made 26 recommendations. This is not a test. I don't expect you to remember them all. I don't think you were a commissioner at that time. Is it your understanding that the majority of those recommendations have been implemented in New South Wales?

JOHN HATZISTERGOS: No. That is not my view. You're talking about Operation Eclipse?

The Hon. ROBERT BORSAK: Operation Eclipse, yes.

JOHN HATZISTERGOS: No, that's not my view at all. In fact, linking into this other issue of political parties, I'm still concerned about the potential for party officials to be used as part-time lobbyists for donor interests. The situation with Operation Eclipse is one which concerns me greatly. The previous Government had committed to implementing the recommendations of that report, but we didn't see much in the way of action. We saw some action but not a great deal. We've got on our website a list of the ones that have been implemented. There's been some commitments made, but we didn't see any substantive action on a lot of them. I have spoken to Minister Graham on two occasions in his office, at his request, about it. I have written letters. The last letter I wrote to him was in January of this year, which followed the meeting that we had in December, and I have heard nothing. I'm happy to give you a copy of the letter that I wrote to him. It's not confidential. Do you want to see it?

The Hon. ROBERT BORSAK: Could you please table a copy of that letter? It would be interesting to see, out of the 26 recommendations—

JOHN HATZISTERGOS: I gave him a list, and I've actually got a timeline of the progress. When we released the report in 2021, we got a letter from the previous Minister, Mr Harwin, on 13 September 2021, acknowledging receipt of the report. On 21 June 2022, my predecessor wrote to Premier Perrottet, advising that he had received no response to Eclipse, which was furnished on 22 June 2021, despite a number of follow-up inquiries. We get a Government response on 18 July 2022. That's on our website. On 22 July 2022, we noted internally within our organisation that there had been an acceptance in principle of 27 recommendations, with two noted for parliamentary action. Then, on 26 October 2022, we placed that response on the website. It's there; you can see it. I think the next thing that happened is I wrote a letter to the Premier and the Special Minister on 30 October 2023—it was sent on 31 October—because there had been no substantive progress in relation to implementation of the various recommendations.

On 6 February 2024, I addressed the Senate in relation to this question of lobbyists. On 20 March 2024, I got a letter from the Special Minister saying that the Government is considering the Operation Eclipse recommendations. On 17 May 2024, I gave oral evidence to your committee on Eclipse and Aero in some detail. I noted that there had been some level of bipartisan support, at least for our earlier recommendations. On 29 May, I sent another letter to Premier Minns re Eclipse and Aero, noting some of the matters that I've recounted in my evidence. On 16 August 2024, I gave evidence before the Electoral Matters Committee.

On 21 August, I received a letter from the Special Minister stating that the Government was considering the Eclipse report in terms of the recommendations in that report and also another report that was done in Queensland. I met with him again in December of last year. I've stated that; he said he was looking at it. I gave him a very detailed letter relating to the lobbying reforms—I've got it here; I can supply it to you—where I annexed a copy of the timeline as an appendix. I haven't received a response. My letter was dated 21 January 2025. I'm happy to supply you with a copy of the letter. It's not confidential. I haven't got a response to it. But it also relates to some local government matters, because the issue of local government lobbying of councillors is something that's also of concern to us. It has arisen in a number of our investigations, particularly in Operations Tolosa and Galley. In both those cases, it involved foreign developers, which is a particular concern for us.

The Hon. ROBERT BORSAK: There's a whole section you've done on foreign interference, which we haven't even got time to go into today. If you could table that, maybe, that'd be great.

JOHN HATZISTERGOS: I can supply you with my letter and I'm happy to supply you with the comparative analysis. Any other information anyone requires, I'm happy to provide it.

The Hon. ROBERT BORSAK: That would be great.

The CHAIR: Both of those documents would be really appreciated, Commissioner. I think we've run right up to time. I have one question, which I'll put on notice to you, Commissioner. It's simply a procedural question in relation to the Electoral Commission. If you have nothing else to add at this point, I'd like to thank you, Chief Commissioner, for appearing before us today. You'll be provided with a copy of the transcript of your evidence for corrections. Committee staff will also email any questions taken on notice from today and any supplementary questions from the Committee. We genuinely appreciate, again, your willingness to appear before us and to answer questions.

JOHN HATZISTERGOS: It's a pleasure. Thank you for making these arrangements.

(The witness withdrew.)

Mr WILLIAM BROWNE, Director Democracy and Accountability Program, The Australia Institute, before the Committee via videoconference affirmed and examined,

Dr JOSHUA BLACK, Postdoctoral Research Fellow, The Australia Institute, before the Committee via videoconference, affirmed and examined

Ms SANDY KILLICK, Managing Director, Democracy Matters, affirmed and examined

The CHAIR: Thank you for appearing before the Committee today to give evidence. Please note that Committee staff will be taking photos and videos during the hearing. The photos and videos may be used for social media and public engagement purposes on the Legislative Assembly's social media pages and websites. Please inform the Committee staff if you object to having photos and videos taken. Can I ask our witnesses, before we start with questions, do you have any questions about the hearing process? Everyone's shaking their head. Ms Killick, do you have a short statement you'd like to make before we start with questions?

SANDY KILLICK: Yes, I do, Mr Primrose. Good morning to all Committee members. I am the managing director of Democracy Matters, a nonpartisan education organisation. I offer professional development to voters, elected representatives and teachers to strengthen our democracy. Thank you to the joint standing committee members for the critical work you do, and for the opportunity to appear today. Voter engagement participation and confidence will remain high in New South Wales if voters see the electoral process treated with respect. What undermines public confidence in elections? Reducing funding to the NSW Electoral Commission; candidates, political parties and media that spread misinformation and disinformation and use personal attacks; and the use of private contractors for local government elections, to name but a few factors.

Voters don't limit their engagement to elections alone, and they probably don't think of themselves as voters. They are community members living in electorates between elections who want their representatives to put public interests first and make well-informed decisions. Community members get annoyed by mixed messages. You can vote, but you can't protest. You can make a submission, but we may disregard the majority of submissions and not explain why. Voting is mandatory, but let's criticise teachers having critical conversations about referendums, for example, with their students. Democracy is vital, but democracy education for teachers or elected representatives is unnecessary. The community members I work with deeply respect public office and they insist on integrity. They feel insulted when office holders do not meet community expectations or explain their decision-making process.

To maintain the high level of trust, we need to build a democratic ecosystem to help all of us thrive: elected representatives, community members, public servants and everyone living in the electorates. What would a democratic ecosystem look like? The New South Wales Parliament role in creating an ecosystem would be to introduce a mandatory K to 12 democracy education syllabus in New South Wales schools to strengthen democracy skills—for example, critical thinking and media literacy—and to allocate sufficient hours per stage to enable skill development: for example, 10 hours per year from years 7 to 11. Then, with the standalone democracy education curriculum, let schools decide how they will deliver that curriculum, because they know the needs of their learners the best.

I'm describing this ecosystem because it goes beyond my written submission to the Committee. Give practising teachers access to nonpartisan professional development on democracy education. Partner with universities to introduce democracy education to teacher education courses. We don't have this. In the second stage, offer media literacy education to all university courses so that we build a society where people have strong media literacy. The fourth aspect, or the fourth contribution that New South Wales Parliament could make, is to make professional ethics courses mandatory for elected representatives at State and local government levels. Conduct these courses in a group setting so elected representatives get used to speaking about democracy or speaking about ethics with their colleagues. We need to create the norms and a culture that welcomes discussion about ethics. Annual ethics training for elected representatives would bring them into line with other professions, such as accountants and lawyers.

The fifth contribution that New South Wales Parliament could make is to commit to fit-for-purpose funding for the NSW Electoral Commission and review the cost shifting of local government elections to councils. We need to invest in electoral integrity. The role of the Electoral Commission does not diminish; it only gets harder. The final contribution would be for this Committee to lead a process in Parliament to introduce a truth in political advertising Act to New South Wales, mirroring the strengths of the South Australia and ACT legislation.

Just to finish with a personal experience which encouraged me to think about an ecosystem approach, last year I met with Emma, a young illustrator, to work together on a resource for young voters. It would be a graphic, cartoon-type resource. Emma was in her early 30s, politically very well informed, and understood the

gap in democracy education resources. I was surprised when, after a few conversations, Emma declined to go further with the project—and it was a paid work opportunity for her—because, she said to me, she aligns too much with those kids that are wanting to split from current processes of democracy.

I find that deeply troubling. That group, voters aged 18 to 40 years, are the largest group of voters coming through the electoral system. They are not interested in business as usual. They want to see bipartisan problem-solving, based on evidence, to get ahead of tough issues like climate change, rather than kicking the can down the road for future MPs to deal with. Just to finish with a comment about the importance of education, and to bring my education background into this conversation, I agree with Jean Piaget, who is a child development expert and education architect. He said:

The principal goal of education should be creating men and women who are capable of doing new things, not simply repeating what other generations have done.

It's with that spirit of growth that I appear before you today.

The CHAIR: Mr Browne and/or Dr Black, would you like to make an opening statement?

WILLIAM BROWNE: Yes, thank you. Thank you for the opportunity to appear before the hearing today. I've been following the early hearings of this Committee with interest and wanted to flag some areas that the Australia Institute has looked into that could be of use to the Committee. On truth in political advertising laws, as mentioned, Australia has the good fortune to have working models in South Australia and now the ACT that could be adopted in New South Wales. The Albanese Government last year introduced a bill federally that is very thorough, including covering AI-generated deepfakes. The bill also seeks to address the concern from some quarters that electoral commissioners are not the best choice of regulator by placing that responsibility in the hands of a panel, including a former judge, that would sit under but be apart from the commissioner.

I also reiterate the supplementary submission I made to the last inquiry of this Committee by saying that Australian governments regulate the truth frequently and stringently. Defamation, perjury and consumer laws are just some examples. The courts are fact-finding institutions, as is this Parliament, and indeed my colleague and I swore to tell the truth at the opening of this hearing. By contrast, truth in political advertising laws are very moderate. To stop publishing misleading content and to explain why is the standard remedy in a truth in political advertising matter in South Australia. It's not a heavy burden. We note also that polling research shows support for these laws among a majority of New South Wales residents.

In New South Wales political parties are majority publicly funded, and it's appropriate to ask that they meet governance standards and the kind of disclosure that is expected of other institutions in which the public has a significant stake. Annual reports, for example, could shine a light on how public money is spent in a way that the default disclosures often fail to do. Unfortunately, while there's a great volume of disclosures in New South Wales, the form these disclosures take makes it very hard to interpret them.

I'm broadly supportive of lowering the voting age to 16 but haven't done any specific research on this topic. Young people will be more affected by government decision-making than any other class of voter. On preferential voting, the case for full preferential voting is strong. The Australian political system, through preferential voting and compulsory voting, reduces the incentive for parties and candidates to suppress voter choice. Optional preferential voting is the one exception because it encourages cynical "just vote 1" campaigns.

In practice, many people do not realise the power of their vote, which means that they stop numbering well before their true preference has been exhausted. Optional preferential voting also discourages three-cornered contests between Liberals and Nationals, further reducing voter choice in the regions. Nor does one form of voting reliably help one side of politics or the other. We owe both compulsory voting and full preferential voting to the centre-right of Australian politics, and without them our electoral system would be much poorer.

I wish more Australians knew just how clever and effective Australian electoral systems are and how proud we should be of them. So many of the milestones in Australia's democratic history, such as its first parliamentary election, some of its earliest local councils and some of the key steps towards Federation, all happened in New South Wales. If people are to value these things, they need to know about them, which brings me neatly to civics education. Reforms to increase voter participation, engagement and confidence depend on good civics education. But results from last year's National Assessment Program – Civics and Citizenship shows that only 28 per cent of year 10 students in New South Wales are meeting the proficiency standard in civics learning. We know that there are many factors driving this, including the challenges of the national curriculum, uneven opportunities for school visits to important civic sites such as New South Wales Parliament, teacher shortages and out-of-field teaching in humanities classrooms.

We welcome the very recent introduction of a subsidy to help regional schools visit the New South Wales Parliament but think there should be more done to expand access to civics knowledge in Sydney's cultural

institutions. We also note that civics education is not just for children. Adults are also entitled to expect opportunities to learn about or refresh their understanding of New South Wales' democratic processes and to learn about how these processes have mattered in their local communities. My colleague Joshua has done a lot of thinking on civics education outside of his work for the Australia Institute so, while it's not a part of our submission, please feel free to direct any questions on that topic to us as well.

Mr TIM JAMES: To both of you, in relation to truth in political advertising, you're aware, of course, that the Federal misinformation bill was withdrawn due to a range of concerns around political censorship and freedom of expression. Are you maintaining that there should be some sort of arbiter of truth in political advertising? If so, who shall be the arbiter? Or are you of the view that the Australian Electoral Commission, which currently does have a disinformation register but which is focused upon process and rules and conduct—it does not seek to be the arbiter of truth in relation to statements, policies or positions. Where do you sit on that spectrum, just to be clear?

WILLIAM BROWNE: I'm happy to start with an answer there. The Federal misinformation bill is distinct from the Federal truth in political advertising bill, which is still before the Parliament although I don't think there'll be a chance to legislate it before the Federal election. I think the case for that bill is very strong. I think electoral commissions are a perfectly appropriate place for this decision-making to take place in the first instance. It's worth noting that under the South Australian model, the Electoral Commission can request a withdrawal or retraction but not compel it, and it's in the court system where a decision that can compel action would take place.

In practice it doesn't come to that because, when the independent umpire identifies misleading advertising, there's usually very ready compliance. Parties and candidates acknowledge that what they said was not accurate and they address it. That said, I think a way of addressing these concerns about the Electoral Commission would be to have a kind of independent panel, as the Federal legislation proposes, that can be within but somewhat separate from the Electoral Commission. That can somewhat isolate the commission from this difficult task and leave it able to focus on election administration.

SANDY KILLICK: I would support those comments and say that New South Wales is in a fabulous position because New South Wales Parliament has the opportunity to learn from both South Australia and ACT. South Australia introduced the legislation in the late '80s, so it's been operating for a significant amount of time, and they would've gained insights from the practice of it. I imagine that the South Australian Electoral Commission would be interested in sharing their insights as well, so we've got that working model to improve upon in New South Wales.

Mr TIM JAMES: But how far should it go? I'm not entirely au fait with the arrangements in South Australia, but do you say that the Electoral Commission of any jurisdiction in this country should, in effect, be policing policy claims or statements or political commentary in the course of the campaign?

SANDY KILLICK: Initially, it should be the candidates, and if they're a member of a political party it should be those people that are policing what they say. Going back to the previous conversation with Commissioner Hatzistergos, I believe there should be some sort of standards set for candidates. So it starts with the candidates and the parties, and then we can try the system that has been introduced in the other States. What's the role of the media in this? I know that Michelle Ainsworth, PSM, has just completed a Churchill Fellowship in August last year looking at the role of the media in her capacity with the ABC, I believe it is. The questions of how we maintain truth in political campaigns and the electoral process is a live conversation, and I'd urge the Committee to be drawing on that research.

WILLIAM BROWNE: I might just briefly add, when commissioners make these decisions, they do so seeking advice and they consult with the people the subject of the complaint. It's not a unilateral decision, and indeed it arises from a complaint process that is used by private citizens and by rival parties and candidates. The commissioner is not going out and searching for claims but, rather, responding to complaints that are received. Also just that it's a fairly limited class of material that's subject to these regulations. It doesn't include opinion, and there's a test of materiality. We're talking about quite substantial and significant claims, and not merely segments of opinion or predictions or warnings.

Ms CATE FAEHRMANN: Thanks, all, for appearing this morning. This is to the Australia Institute to begin with, but I'm sure, Ms Killick, you'll probably have something to contribute as well. I note in your submission you note the issue of the low turnout in terms of First Nations voting. I wonder if you would care to tell the Committee any recommendations or ideas or thoughts as to ways in which that could be increased, whether there's any examples of that working well, because we're dealing with a situation in Toomelah, I think, where the voting turnout during the local government elections was okay, but the informal votes were very, very high. Concerningly high. I am wondering if you've got recommendations in that regard.

WILLIAM BROWNE: We looked a little at this issue for Federal politics, so if I could take that on notice, I can see if it's analogous in New South Wales and if there might be things that—

JOSHUA BLACK: I think the importance of well-developed, targeted, effective education campaigns for Aboriginal or Torres Strait Islander students is worth noting. Civics education is not just for students and it's not just for children; it involves adults as well. But I think teaching First Nations students to get familiar early with the nature of democracy in New South Wales, the history of their own relationship with it—I think these are really important bedrocks on which a healthy relationship with electoral system as an adult for a First Nations person can be built on.

SANDY KILLICK: I would add to that, too, for the person offering the education to Aboriginal families and communities—because of the strong kinship relationship, it's not just students that we need to be talking to but it's Aboriginal people themselves who are trained. Aboriginal community members or service providers who have an existing relationship to deliver that training would strengthen the receipt of the message.

Ms CATE FAEHRMANN: Ms Killick, I'll go to you now. Again, just in terms of increasing voter participation, but particularly for younger voters, I wonder if you care to expand upon what you were saying in your opening statement. It is very concerning, the drop in support for democracy. In some way we kind of understand why, but it's also very distressing. What further kind of recommendations or thoughts would you like to give the Committee in that regard?

SANDY KILLICK: I'd like to share my experience of being in a room with young people and having a non-partisan discussion with them about how will they choose the candidates. How do you make a good decision? The sophisticated conversations that I had with them show that they're very ready for greater democracy education to be made available to them through the school system, but also through youth networks. I offer training to youth workers so they can have conversations with the young people that they have relationships with. I'm not always the most appropriate messenger or person to work with them, so it's about using a "train the trainer" approach, but there's a great degree of readiness.

I've been offering voter education in the community since 2015 at least, and people greatly appreciate the chance to have a safe conversation in a welcoming environment where they know they will be listened to respectfully. To me, it's quite a contrast to our general perception that we shouldn't talk about politics in Australia, that you'll blow up the family dinner party. It reminds me of some sad experiences I had during the 2023 referendum which was, to me, a great democratic education opportunity, but the conversations got shut down. I approached service organisations and offered to give free education on the yes case and the no case and to answer questions from people so that they could feel that they would be well-informed voters, and some of the service organisations declined it because people felt that it was politicising their organisations. I feel there's a big difference between politicisation and democracy education.

In answer to your question about how do we maintain the levels of trust in the system, we need to wholeheartedly commit to education opportunities across the school system, but also to reach the groups such as First Nations people but also new citizens. Local councils and other organisations offer citizenship ceremonies, which many of you would've attended yourself. New citizens are enrolled by the AEC at the time, but that's where it stops. Often people have migrated to Australia as adults because of our strong system of democracy. They know that they can put trust in the Government. It's about identifying the target groups and what is the best opportunity where education will be well received by them.

Mr STEPHEN BALI: I was just looking up some stats, getting to the Federal election. People often talk about local government elections and the informal rate. On the night, there was a high informal rate, but we've got to correct the record a little bit. The way the commission counts the votes, they just count the simple votes. In the end, I was just looking at a range of electorates across local government. It ranges from about 4.9 per cent to—one country area is 7.2, but generally it's around 4 per cent to 5 per cent, which is not that bad when you compare it to New South Wales elections or Federal elections. I just had to correct the misperception.

In one of the submissions, they were talking about potentially a judge measuring truth in advertising. Given that most judges are appointed by the Government of the day, and we've seen what's happening in the US et cetera, are they really an independent arbiter? I know they sit on the bench and they do all the right things, but to get them to make a judgement on political decisions and truth in advertising—and secondly, there's actually entire courses at university that talk about what is truth. Politicians get criticised that we don't change with the times. Just because you say something in an election, hopefully from the right spirit, new evidence comes forward and things change. So how do you address the argument of truth and holding people to account versus changing facts, as well as a judge being the arbiter of truth?

The CHAIR: Maybe we could begin with the Australia Institute. Tell us the truth.

WILLIAM BROWNE: Firstly, there's strong precedent for calling on former judges to take on integrity roles, whether it's anti-corruption commissions, royal commissions and so on. The Parliament has frequently turned to judges because of their established independence and separation from the other arms of government. Of course, with any of these measures, both Parliament and the Executive can help be a safeguard as well. The court system is also itself making political decisions. Any time a court sits as the court of disputed returns, it will be deciding things like whether an election is re-held. That problem is inescapable. Thankfully, Australia has avoided it with a strong separation of powers and a strong culture of independence in the judiciary. On the question of what is truth, I think this is why it's so salient that governments and parliaments around Australia regulate the truth in all kinds of areas. Indeed, the sanctions for misinformation are much greater in other areas than they are in proposed truth in political advertising laws.

While there's a philosophical question at play about the nature of truth, it's one that parliaments have been perfectly happy to weigh into on all kinds of issues. The beauty of having these South Australian laws is you can go through the public rulings on different truth in political advertising matters. I think in almost all cases it's very clear how and why a statement was misleading, partly because the law does carve out things like opinion and statements that are not material. That similarly answers the question about new evidence. The law doesn't cover things like a prediction about what will happen or a warning about what will happen. Where it does capture these kinds of things is when there's a claim about present day. "So-and-so has a secret plan to do X" needs to be supported by evidence. But when he's elected, "So-and-so will do X or might do X," is not subject to the laws because it's not a statement of fact; it's a prediction.

JOSHUA BLACK: There was a really interesting exchange during the recent inquiry into the conduct of the New South Wales State election in 2023. The discussion of truth in political advertising laws obviously came up in those hearings as well. One really interesting point made by one of the witnesses was that just because something is difficult is not a good argument for not necessarily doing it or attempting it. Again, we've got really good precedents in place in South Australia and the Australian Capital Territory to show how these kinds of laws work. I think it's also worth suggesting that although these would be truth in political advertising laws, I think we often allow the word truth to become a bit of a red herring. What these laws are designed to do is stop misinformation, to minimise the threat of disinformation undermining the integrity of our electoral processes. Although these are truth in political advertising laws, I don't think that we should allow huge questions of epistemology to stop us from doing something that could be, on balance, a net benefit to the people of New South Wales.

SANDY KILLICK: I support the comments from the Australia Institute and say that I appreciate that elected representatives at all levels of government are in a very difficult position. People have high expectations of you. You're under public scrutiny constantly. There are many matters. We seem to associate good decision-making with fast decision-making. We want there to be decisiveness. Sometimes there is a case for saying, "I'm still in the information-gathering phase." If there does need to be a change of position, then I think the community is open to hearing why you've changed your position and what's changed your decision or your place on that. They benefit from understanding the decision-making process that you go through.

I think part of the democracy education could be talking about what are the things that elected representatives do, particularly between sitting weeks, to understand committee processes like this and to understand the way that you are informed, and that truth in political advertising legislation can have a really important educative process which will help the public understand your role. I see democracy as based on relationships and that we need to strengthen the relationships between you and the community. It needs to be a two-way process, and it's okay to say you've changed your mind as long as you can explain why to the people.

Mr STEPHEN BALI: Just one other issue to explore, about young people. A few times, it's popped up, saying they're disengaging from the current political discourse and that they were upset, as provided in your evidence. When I look at history, and being around for a little while, the '70s and the '80s, we had the Vietnam War protests. If you want to disconnect from politics, being sent off to war—even now, the issue of potentially war and sending troops around the place, yet we don't see the youth really engaged.

Are we just creating this echo chamber of social media and just reinforcing to the youth that they feel disconnected? I know many of us in this Chamber, if not all of us, both in the upper House and the lower House, are always constantly reaching out. The only time people focus really on politics, unless there's an outright decision that they're upset about or a big important debate happening, the general idea of politics, as you just raised a second ago, is what do we do between Parliament sitting? We're probably busier then than when Parliament sits. The echo chambers of social media, where people are really in a smaller vacuum, because to a large extent you don't get—the local papers have dropped off.

All the information has dropped off, yet when we go to schools et cetera—you're right, there's only limited time that we even have the opportunity to talk to students. How do we address the communication between the young people, from your studies and your research, versus that we want to communicate, yet they are—sometimes I feel as a politician that the youth—when you're handing out at railway stations people just don't want to know anything about it. People are already precommitted in their viewpoints. How do we open up people's mind to have that political discourse that you're talking about?

SANDY KILLICK: I'd like to clarify that young people, 18- to 40-year-olds—they're very engaged in the issues that affect them, the people that they care about, the neighbours in their street, and they do want to know who is working to address those concerns, because those concerns keep them awake at night. So if you can communicate through emails that say what work you've done to—as a social researcher, I've signed up to many email lists from many different political representatives. There's some that only turn up asking for donations, and there are some that talk about how they voted in Parliament, what work they focused on between Parliament. So they've given concrete examples. It's about feedback loops and having conversations, sharing the information, making the information available, but also, I think, building relationships with the lead organisations in your community as well and just making sure that they're in the room when they will improve your decision-making.

The CHAIR: Does the Australia Institute have any comments on this matter, please?

WILLIAM BROWNE: I wish I had the answers to declining participation and disengagement. I think part of the story is the declining participation in community groups and civil society more broadly. Whether that's trade unions, or political party membership, or different community and charitable groups, we see a long-term decline across the board. I think that does have an effect, because, firstly, people participating in mass movements does give the opportunity to see and get results; and, secondly, just participating in internally democratic organisations models democratic processes and makes real the more abstract kind of trade-offs and compromises in decision-making that happens in parliaments. In the nineteenth century, whole generations of working-class people had democratic rights through their union, not through the voting system, and that prepared them and made them more effective in winning the vote and when they had the vote.

I think also the politicians can do more to model and encourage civic participation. In our Federal submission to a related inquiry, we pointed out the language around protesting, even nonviolent protesting, and the way politicians talked down and diminished that; similarly—and, again, this was Federally; I know I'm preaching to the converted here—dismissive and boilerplate responses as to parliamentary inquiries that have drawn in responses from literally thousands of people across the country, that were met with a stock response. These kinds of responses and attitudes train people to think that politics is not worth engaging in, even though we know that there should be a resurgence of it.

The Hon. BOB NANVA: Just a couple of quick questions—the first one probably more relevant for the Australia Institute. I just wanted to come to your point in your opening statement regarding optional preferential voting. I suppose the question is, in an election where a significant number of voters have not indicated a preference past an eliminated candidate and have had their votes exhaust in an optional preferential system, do you think you could reasonably describe that process as truly expressing the will of the electorate, where you've got so many votes exhaust past an eliminated candidate?

WILLIAM BROWNE: The great advantage of the full preferential voting system is that we can say with certainty that the person who was elected was preferred against the alternative by the majority of voters. That does give an additional legitimacy to the outcome. I think it is a real shame that voters don't realise the power of continuing to number preferences, when in practice they do have an opinion about the final outcome, the final two who are in the race. I'd be loath to be too critical of any democratic system, because of course a multiplicity of electoral systems can all be legitimate, even if some methods are more effective at drawing out the true preferences or the full preferences of the voting population.

I think that's clearly the case, that full preferential voting, by spurring voters to stay in the count, makes them think more seriously about a wider range of candidates and helps ensure that the candidate that they ultimately want is the one elected. We see that in the long history of three-cornered contests involving Liberals and Nationals, where, before preferential voting was brought in, the predecessors of those parties were eating each other's lunch and a candidate who wasn't preferred by the majority was getting in because the soon to be Coalition parties were splitting their vote. I think that's a real shame.

SANDY KILLICK: Well said. Nothing to add.

Mr TIM JAMES: Given we're on preferential voting, which is something we've talked about previously as a committee—gentlemen from the Australia Institute, you keep citing that compulsory preferential voting generates an outcome in which the result is a reflection of the preference of the majority. Can I point out to you

respectfully that in fact it's quite the opposite. In the soon to be abolished Federal seat of North Sydney, the teal candidate was elected with a 29 per cent primary vote. Less than one in three local people put Kylea Tink 1 on their ballot paper, and yet it was preferences—the compulsory allocation of preferences—that indeed got her across the line. Is it not the case that optional preferential voting is a more true, free and accurate reflection of the will of the voter? If they do not wish to put a preference against a candidate, should it not be up to the voter to take that decision? Do we not, therefore, in line with the North Sydney example I've just outlined, get a more true, accurate and representative outcome?

WILLIAM BROWNE: I'd say, firstly, there's no need to single out Kylea Tink in this example.

Mr TIM JAMES: It's just an example. Why wouldn't I point towards an example? There's no singling out of the person, but there are many other such examples. There's no singling out of the individual, it's just an example to demonstrate the point.

WILLIAM BROWNE: Yes. I was just going to add that The Nationals MP Sam Birrell was in a very similar boat on 26 per cent of the primary vote. Again, I don't think there's anything illegitimate about the outcome there, because he won the majority of preferences, as Kylea Tink did, and was chosen by the majority of the electorate.

Mr TIM JAMES: But, no, that's not the case. They're not chosen by a majority of the electorate because the result is not a reflection of the first preference of a majority of the electorate. It was less than one in three in North Sydney, in fact. So it's not a correct statement, is it?

WILLIAM BROWNE: It is a correct statement—

Mr TIM JAMES: No, it's only on the back of preferences that are mandated—

The CHAIR: Mr James, how about we just hear the response, and then I'm very happy for you to ask a supplementary question.

Mr TIM JAMES: Sure.

WILLIAM BROWNE: Winning from a low primary vote can also happen in an optional preferential voting system and indeed a win from second place in primary votes can happen under an optional preferential voting system. First-past-the-post voting would be worst of all in terms of getting a sample of the entirety of the electorate. When you go to the final choice between the last two candidates in the race, preferential voting gives us the result that is preferred by the majority of voters in the electorate.

The concern with optional preferential voting is that we know that voters typically have preferences beyond the first preference, and yet the majority of voters in New South Wales stop at one vote and therefore exclude themselves from the remainder of that process. They do this even though, when they go on to vote at the subsequent Federal election, because they're required to number every box, they number every box, and they do so in a way that suggests that their preferences are coherent and would apply to the State election as well because they follow similarities of ideology and policy of the parties and so on. So I think that it's clear that, in practice, voters are less counted in optional preferential than they are in full preferential.

Mr TIM JAMES: But that's their choice. That's their will. They should be free to do as they see fit. It's their ballot paper and their vote. Each vote is worth the same value, and it should be free for those citizens to vote as they see fit. Do you not agree?

WILLIAM BROWNE: A vote is given equal value if it stays in the count for the entirety of the count. In the rare cases where a person doesn't have a genuine difference of opinion between candidates, it's worth noting firstly that could happen anywhere in the process. It might be that someone has no distinction between who they'd like to preference first and yet, under any voting system, people are forced to choose a first preference. Full preferential voting just continues that logic down the chain. The only situation in which optional preferential voting allows a fuller choice is if the place in which a person cannot distinguish between candidates is the very last place, the place where they stop numbering.

Mr TIM JAMES: By that logic, though, people are free not to lodge a ballot paper. They just need to get their name ticked off the roll. So your logic doesn't flow, I'm sorry. It just doesn't flow.

The CHAIR: Can I just ask, Ms Killick, given that people are interested in focusing on this at the moment, do you have a comment, please?

SANDY KILLICK: Yes, I'd like us to think about the experience of the voter, who votes in local council elections with one set of ballot papers, State elections with another type of ballot papers, and then Federal. If you aren't confident in the formal process of voting, then it can be confusing. So to have some consistency of full

preferential voting across the three systems, I think, would be advantageous to reducing the informal votes. And I'm concerned about the informal votes because I know that voters care about their vote. Also I'm concerned about informal votes because I have worked in different polling places and know that there can be inconsistencies in the practice of the individuals in the polling places, so the vote can be cancelled because of other people's actions. But to go back to the experience of the voter, as you said, Mr James, the voters only need to have their name marked off and receive a paper and put it in a ballot box. They don't have to fill it in, so they can exercise their choice in that way as well.

Mr TIM JAMES: But you're saying that they have to fill in every box. That's your position, isn't it?

SANDY KILLICK: Yes.

Mr TIM JAMES: Doesn't that run counter to the notion that they don't have to fill in a ballot paper at all?

SANDY KILLICK: No, what I'm saying is—

Mr TIM JAMES: How do you reconcile those two principles?

SANDY KILLICK: If a person chooses not to write anything on their ballot paper, that's their choice. If a person chooses to follow the instructions on the ballot paper, then that's their choice. If they choose to only fill in some of the boxes, then it's a question of how the officials in the polling place determine if that voter has communicated their voting wishes through what's written on their ballot paper, so there is some discussion about, "Has that voter communicated their preferences?"

Mr TIM JAMES: Under compulsory preferential voting, there is no choice. They have to number every box, otherwise it's not a valid vote. You keep talking about choice. Shouldn't there be a choice for the voter to not number every box as per their will and their intent?

The CHAIR: If any of the witnesses would like to take a very good line of questioning, please maybe take it on notice. I'm aware we've got about four minutes to go, but I would like to pursue Mr James's comments in relation to asking all the witnesses about what you would do to reduce the level of informal voting. Ms Killick, you've already begun to address it by having some consistency across all electoral voting systems. Maybe I'll ask you if there's anything else you'd like to add and then I'll come maybe to the Australia Institute. In terms of informal voting, what could this Committee recommend that may assist?

SANDY KILLICK: There's two things I'd add. One is for there to be fit-for-purpose funding for the NSW Electoral Commission to be able to strengthen its community education, particularly in communities with high new citizen groups. The second thing would be for there to be democracy education in schools so that people are confident when they go to vote in their first, second and third elections.

The CHAIR: Thank you. Before I go to Mr Bali, can I ask if the Australian Institute has any comments?

WILLIAM BROWNE: I would second those recommendations and also just flag a role for the media. I think federally we've seen a lot of speculation about election dates and much less education about what the election would actually entail.

Mr STEPHEN BALI: Mr Chair, while I wholeheartedly endorse the comments and any type of civics education et cetera is really important, may I pose just a question: What level of informal voting as a percentage would arguably—I know it's zero, but would be really acceptable? Is it 3 per cent, 5 per cent or 10 per cent? What do you see as an acceptable level of informal voting?

SANDY KILLICK: There will always be some level of informal voting, and I think it's worth tracking it and matching the tracking of the informal vote with new initiatives.

Mr STEPHEN BALI: Sure, but what's the percentage you think is acceptable? Is it 3 per cent, 7 per cent—what's an acceptable percentage when we're gauging the success of an election? How low should we try to get? I know we want to get down to zero, but there will be people that will vote informal. Do you see it as a percentage?

SANDY KILLICK: How we got to this conversation was looking at should we have full preferential voting, so I don't know if it's the correct question to say, "What percentage do we want to get it to?"

Mr STEPHEN BALI: I suppose, Mr Chair, just to further clarify, we've heard so many times in just this session alone "high informal voting". When I look at the evidence, in 1977 in the Senate elections there was 9 per cent informal voting, and then, election after election, we're now down to 3.4 per cent informal voting. Actually, conversely, in the House of Representatives in 1977, there was 2.5 per cent informal. Mind you, back

in those days, there would have been only, like, two or three—there weren't that many candidates running in each electorate. Today, it's 5 per cent.

Is informal voting really an issue, or is it something in our echo chamber of political discourse? We like talking about informal voting. Five per cent or less, to me, is probably a reasonable number of informal votes. Yes, we need to have civics. Yes, we need to improve the knowledge. That's a different question, and the types of electoral systems out there, but do we have a fundamental belief that if informal voting goes above 5 per cent, then we really need to push and put more money into education, or is it 3 per cent? Is it 10 per cent? At what stage should we, as a society, start to worry about informal voting?

SANDY KILLICK: I think if there's an upward trend that carries over across multiple elections and perhaps if that trend is higher in some communities than others, then that's a signal that we need to explore.

WILLIAM BROWNE: If I can add, I think you're right that there are many factors involved here in whether a vote gets counted, and an informal vote is only one of them. At the Federal level, we've calculated the number of people who aren't on the electoral roll, plus the number of people who are on the roll but don't turn up to vote. From memory, it far exceeds the number of people who turn up to vote and then cast an informal vote, so I would be at least as concerned about those other groups as the group that is casting an informal vote. At the Federal level too, I think from memory about half of the informal votes seemed to be deliberately informal, and about half are informal by accident.

Again, I think the concern should lie with the accidentally informal, the people who thought they were casting a valid vote, because as we've discussed today, in practice, people can turn up and cast a blank ballot and exercise some kind of democratic statement by doing so. I don't think informal voting is the whole of the story. I think we measure disengagement in a few different ways, and we see that, in general, the share of the voting-age population that casts a vote that gets counted is going down—is down quite a lot since the 1940s, and that is the overall picture of concern rather than informal voting, per se.

The CHAIR: Thank you. We're actually over time, and I suspect we could continue this conversation for quite a considerable period of time. I apologise again to Mr James, because that was a very interesting conversation but, once again, I think we need about three or four hours to finish it properly.

Mr TIM JAMES: I agree.

The CHAIR: Thank you to all of our witnesses for appearing before us today. You will be provided with a copy of the transcript of your evidence for corrections. Committee staff will also email any questions taken on notice from today and any supplementary questions from the Committee. I, for one, will be asking a couple of supplementary questions I didn't get around to asking. It was a really good conversation. Thank you very much.

(The witnesses withdrew.)

(Short adjournment)

Mr HUGO BERGERON, Acting Executive Director, Funding Disclosure and Compliance, NSW Electoral Commission, affirmed and examined

Ms RACHEL McCALLUM, Electoral Commissioner, NSW Electoral Commission, affirmed and examined

Ms ANDREA SUMMERELL, Executive Director, Elections, NSW Electoral Commission, affirmed and examined

Ms PHILIPPA BRANDON, Director, Communications, NSW Electoral Commission, affirmed and examined

The CHAIR: Thank you very much for appearing today. Please note the Committee staff will be taking photos and videos during the hearing. The photos and videos may be used for social media and public engagement purposes on the Legislative Assembly's social media pages and websites. Please inform the Committee staff if you object to having photos and videos taken. Before we start, do you have any questions about the hearing process? No. I'm sure you've been through it a few times. Would any of you like to make a short opening statement before we begin with questions?

RACHEL McCALLUM: Thank you for the invitation to appear today. My colleagues and I appreciate the opportunity. I've been in the office of Electoral Commissioner for about three months now, and I'd like to acknowledge both past and current colleagues from the NSW Electoral Commission. The commission had a significant year in 2024 delivering and regulating the statewide local government elections. This was almost certainly the biggest public participation event in Australia last year, and they happened in a year that was globally significant for participation in democracy. What voters and election participants see and experience in an election is the outcome of many streams of work, including months of complex planning.

In between these grander scale events, the Electoral Commission must run many smaller but still very important community elections and by-elections. Since the whole-of-State elections in September last year, we've run 27 other elections: a mix of registered clubs, professional and industrial associations, local by-elections, local countback elections, and State by-elections. Right at this moment, we are counting for another State by-election with postal votes still being received for another few days yet. I would like to take this opportunity to express my appreciation to our local staff in Port Macquarie and our head office staff who are working with them to bring this election to a conclusion. Our local election manager and her staff as well as our operations team in Sydney worked so diligently in the lead-up to the start of voting when the changing path of a recent cyclone meant that our offices were in evacuation zones and flood warnings prevailed across the district. Thankfully, in this case Port Macquarie was spared this time.

I can say about that election, while we're still counting, the turnout of voters has been notably high for a by-election, currently at just over 80 per cent, but with many postal votes still to arrive, so we would expect that to go a bit higher. Despite that being pleasing for a by-election, we acknowledge there is always room for improvement and innovation. In our submission to this inquiry, we included some suggestions for investment in new engagement activities, for example, that are relevant for all types of elections. Maintaining election integrity and public trust also requires realistic and ongoing investment in the work of independent electoral commissions, including keeping the technology upon which we all rely functioning as intended and secure.

In the three months since being appointed commissioner, therefore, we've developed some revised proposals for urgent investment in our people and systems. But, understanding the current budget constraints facing the State, these proposals are more in the nature of urgent maintenance than expansion, so they do not address all the risks and opportunities the commission did highlight in its written submission to this inquiry and at other inquiries in the Parliament. But they do offer an opportunity to build some greater resilience at the commission and provide some more capacity and flexibility for us to respond to the participation, trust and integrity challenges facing all democracies. I hope that our submission and the evidence we can give today and in any questions that we take on notice are useful for the inquiry.

The CHAIR: I assume it's the case that there are no other supplementary statements to make from any witnesses?

RACHEL McCALLUM: No, thank you.

The Hon. ROBERT BORSAK: Ms McCallum, as long as I've been on this Committee—and I think I've been on it for the best part of 15 years, on and off—I've always heard complaints from the commission about lack of funding and lack of consistency of funding. I've also watched attempts come and go to digitise voting. From my point of view, I'm glad to see that it's largely gone, in terms of trying to put it onto the general voting public, putting aside assisted voting. In your submission you talk about "a stable and secure funding base". It's the

first time I've really seen it addressed in this fashion, where you talk about "cyclical event-based funding", as opposed to "ongoing remit" funding. Do you want to address that?

RACHEL McCALLUM: Yes, I can. In my opening remarks I mentioned that we have already just submitted some new budget funding proposals for the commission as part of the upcoming State budget. As is pointed out in our written submission, however, we had some bigger submissions in the last State budget which were not funded at that time. That was a full re-baselining, as we call it, for the commission's functions plus a digital modernisation program, which was an extensive multi-year program for updating our legacy systems plus introducing some new functionality where that is appropriate.

Given that I've arrived in December, I took the view that we should be seeking to stabilise as best we can our ongoing workforce in the lead-up to the State general election in 2027 and the local government elections in 2028. We're aiming to break our reliance, to as great an extent as is feasible, on contractors, which are a necessary consequence of having that cyclical funding that you referred to. We are always going to be asking for additional funding in the lead-up to a large event, of course, but we've made a submission both here and in other contexts that that limits our ability to retain valuable expertise in elections. It also forces us to be inefficient in the way that we run elections. So we are asking for more staff on an ongoing basis.

The Hon. ROBERT BORSAK: We had a lot of discussion in the previous Parliament with the previous Electoral Commissioner about the legacy systems you've got for running voting on polling day and pre-poll, et cetera. What's the condition of those systems, and how old are they?

RACHEL McCALLUM: They're more than a decade old now. We're talking as fundamental as the counting system for the upper House. These are systems that we are entirely dependent upon now to be able to produce a result for the upper House, for example. We must undertake maintenance on that system between now and the State election. Part of what I'm also doing is asking for permission to redirect underspend, if you like, from the local government elections towards undertaking that critical work on the count system.

There are also other statutory requirements that we are required under law to implement by '27, and that is also the logos on ballot papers. That's not a legacy system but it feeds into our legacy systems. It's not straightforward to be able to include the right logo on all of the ballot papers for the 93 districts against the right name on the ballot paper. These are critical things that must be done right for the printing of ballot papers in '27. That requires also significant work to be undertaken on our count system and our ballot paper production processes.

The Hon. ROBERT BORSAK: We got evidence from the previous commissioner that the legacy systems you are running are particularly open to cyber attack and can't really be updated for the latest cyber protection technology. Is that still the case? Do you have a plan to try to overcome that?

RACHEL McCALLUM: Yes, we do have what we call a cybersecurity uplift program in place. It has been partially funded. One of the other submissions from the Electoral Commission this year in the budget has been to ensure that we get the difference, if you like, between what we have been granted already to introduce some more cybersecurity tools and the ongoing running costs to actually make those tools useful. There is a difference at the moment. We don't have sufficient funding to make those tools fully operational. Our cybersecurity posture, if you like, is still not very mature, but we are on a path to making it much more mature. We're obviously extremely aware of the criticality of being able to have security arrangements in relation to elections now that meet the global standards for cybersecurity. There are some limitations, as you say, though, with legacy systems.

The Hon. ROBERT BORSAK: Some of that legacy technology simply can't be upgraded.

RACHEL McCALLUM: No, that's right. A lot of our effort will need to go into being able to monitor properly what is happening in relation to those systems, so that we can at least identify when there are problems or if there are problems.

The Hon. ROBERT BORSAK: Just going back to the counting system for the LC, are you talking about a complete rewrite or are you talking about a retrofitting of the existing software? I think I did hear from someone somewhere that there was only one person left that could actually support it. Am I right in saying that?

RACHEL McCALLUM: I wouldn't like to say just one person, but we certainly have key person dependencies all over the commission. But that is one in which we do have a key person dependency because of the age of that particular system. I wouldn't describe it as a complete rewrite. I probably will refrain from trying to exactly describe what our technology people will be doing, but it is not starting from scratch. It is using the system that we have and repairing, to the greatest extent possible, any of the gaps that have been identified in it.

Mr NATHAN HAGARTY: I don't want to get into a tech discussion about what it's written in and why, but maybe we can take that on notice as to sort of why.

RACHEL McCALLUM: Okay, I'll take that on notice.

Mr NATHAN HAGARTY: Just on cybersecurity, can you detail specifically which systems are exposed and, therefore, what is the risk to the State and to the voter, and what risk mitigation you can put in place to make sure that there are checks and balances in place against a potential cyber attack.

RACHEL McCALLUM: I think, previously, answers to that type of question have noted that it is, in fact, itself a risk to try to articulate all of the weaknesses that may be there. Perhaps if I could answer it more broadly and say that we have a lot of systems doing a lot of different parts of the process, and we are reliant now on those systems, given the size of the electorate. More broadly, to revert to manual processes is simply not feasible in a number of those cases. For example, it would be more than difficult to revert to any manual process for counting the Legislative Council, given you're talking over five million ballot papers, multiplied by the number of preferences that we're talking about there. It might not get to five million, but in that vicinity.

In terms of the cyber risks, though, we do face the sort of risks that all organisations are facing now in relation to just a very simple cultural awareness or education amongst our own staff across the State about malware and just not clicking on the link, that very simple thing which is so often the cause. So there's that education piece internally, but there's also many places in our overall ecosystem where people are interacting with us from outside. So we have many online services. There are exposures there as well. Electoral commissions everywhere are a very valuable target for bad actors to make an impression. We are conscious that, even though we're a subnational organisation, we are still of interest to international cyber security threats that are more at the nation-state level. We're also subject to just criminal activities in relation to things like ransomware threats.

Mr NATHAN HAGARTY: You obviously hold very important personal information. I'll park that to one side. I guess my concern, and the concern that I want to alleviate for the many, many people watching this live online, is that we've seen accusations of malicious actors getting involved in elections around the world, in the event of an election here, do we have processes in place whereby the computers spit something out at the end, we have manual—not so much fool proof—processes in place that go, "Something's wrong here. Unfortunately the count's going to take a lot longer and we're going to have to use manual processes." Is there some integrity in there?

RACHEL McCALLUM: Yes.

Mr NATHAN HAGARTY: Mr Borsak spoke about how we flirted with online voting and we went away from it. If someone takes a pen or a pencil and writes it on a piece of paper, there's a paper trail. Do we have a paper trail that's non-digital that can verify the results when the computer spits something out the other end?

RACHEL McCALLUM: Paper might not be necessary. We have a lot of paper still. What I would say is that having checks and balances in the process so that we are aware of any anomalous trends or outcomes is an absolutely key part of the way our processes are designed, in relation to counting. I have to say, we have just had a demonstration of that on the weekend about how those checks and balances are there in the count system. I think possibly, Ms Summerell might be able to outline in more detail, if you want, in terms of what those sort of integrity steps are. But even in relation to the count systems that we do have, they are designed with the idea that we are identifying when there are anomalous things, because the key part of any counting process is that people trust the legitimacy of the outcome.

But it does require us in the cyber security space to be aware that we can't be complacent about that, and that even if we can identify through our own internal integrity processes that something is wrong, that in and of itself won't necessarily save the election. Even though it was not a cyber security issue in relation to what you mentioned about the last time, in which internet voting was used, that wasn't a cyber security issue, we could see the problem was happening in real time and so we were able to make our own assessment about the extent to which that problem compromised the trust in the election, the legitimacy of the election results in that case. If you would like her to, I think Ms Summerell could probably add some descriptions of those process integrity steps that we have in place.

ANDREA SUMMERELL: Yes, I can point to a few things that we do along that count process that gives us the assurance that the paper entries on the ballots are what are being captured in the computer systems. We obviously have the initial counts that happen in a voting centre, which are a manual count, and those results are entered on election night. When we do that check count process, which is the data entry of those ballot papers, our systems do a check that there is not significant change of ballots moving from one group to another. So we have a process where, if there is any movement that we go back to the paper to make sure that has been accurately represented. Our data entry processes are two round blind entry. An initial data entry officer is entering all the

markings from the ballot paper and then a different second person is then doing another round where they do not see the first entry.

Before we run the count, a number of QA checks are done, where we are printing out what we call "ballot paper marking reports" from our system, checking that against the physical ballot to note that every single ballot marking is the same as the paper ballot. So we're doing those processes along the way, as well as our data team having a look at those results to make sure that there's not been any significant change to the trend. They're the measures that we've put in place with I guess a person undertaking those activities to make us feel confident that the results at the distribution of preferences can be relied on.

The Hon. CHRIS RATH: Thank you for your submission and for appearing today. In your submission, and also when your predecessor appeared at budget estimates last year, one of the concerns that was raised, and this follows on mostly from Mr Borsak's line of questioning, was that because of the lack of funding, that you would have to let go about a third of your staff. What type of staff have been terminated? What type of roles do they have and what impact will that have on the functions of the commission?

RACHEL McCALLUM: As I said, I arrived in December. There had been a process, from when I think the comments that you were just referring to were made, where to a significant extent a number of contractors whose roles were coming to an end, who we would have liked to have kept rolling over into the State election program—so those were program management, information technology, core ongoing support functions for our planning and preparation for elections, are the ones who have largely gone.

There have been some other temporary roles, who are public servants rather than contractors, who have also left, where we've had to make some changes due to where the funding was coming from. There were a lot of different ways in which we need to fund our temporary roles, because we have a bigger need than our ongoing labour expenses cap. What I have decided, when I came into the role, was that we would extend more contractors and temporary staff until the end of this financial year, in order to go back to Government and ask for additional funding. As I said, not the same scope of funding that we did ask for last year, but to minimise the number of impacted staff.

The Hon. CHRIS RATH: So it hasn't been a third that was predicted, it's been significantly less than that?

RACHEL McCALLUM: So far, that's right, but if we're not successful in receiving that additional funding then there will be a significant impact from more towards the middle of the year.

The Hon. CHRIS RATH: You also said in your submission that you're not able to offer current service levels and support to political participants. Is that as a result, as well, of some of the funding that you weren't able to secure, or has that not come to fruition? What type of support were you referring to in that?

RACHEL McCALLUM: In terms of that, to political participants is who you referred to?

The Hon. CHRIS RATH: Yes, political participants.

RACHEL McCALLUM: We're mindful that the commission has, in the electoral funding space, a statutory function of providing guidance and support to people who have obligations under that Act. So those sorts of functions are covered by—I wouldn't call them political participants, but participants in the broader sense. Voters, of course, as well, in relation to providing services to our voting public. In the election operation space, being able to—I would say that at the local government election, although I wasn't the commissioner at the time, I'm comfortable that a very high level of service was in fact provided to the political participants at that time. But if we are required in the future to contract, I suppose, in relation to our overall offering, then there may be less ability for us to engage with the very many political participants who call us, who write to us or email us looking for guidance on how to discharge their own obligations.

The Hon. CHRIS RATH: Since you raised local government, I had a question on that, and then I'll hand over to Mr James. One thing we heard, I think, in the last hearing from some of the witnesses was the inability of voters to do an absentee vote for local government elections, unlike for State or Federal. Has any work been done by the commission to look at maybe addressing that? I know it might be a bit harder at a local government level, given some of the peculiarities, or would additional appropriation be needed from the Government to do that? But I think it is a lot of frustration for a lot of voters that they might not be in their own council area or even ward on election day, and then they find themselves unable to vote. Has the commission looked at addressing that?

RACHEL McCALLUM: I think as you mentioned there, the statutory scheme that applies to local government does not actually permit absentee voting.

The Hon. CHRIS RATH: So we need to change the legislation?

RACHEL McCALLUM: Yes, if that's the case, but I would sound a note of caution there because when you think about the number of councils, the number of wards within the councils and the number of polls and constitutional referendum that occur at council elections, that would be a mammoth and possibly overwhelming task to be able to provide, at every polling place, the capacity to vote in any other ward or local government area across the State. So there is a policy reason, I would suspect, behind the fact that it doesn't offer absentee voting right now.

The Hon. CHRIS RATH: And they run their own show a little bit more as well at a local government level, in the sense that they can use the Electoral Commission, but even some of them don't—well, only a handful.

RACHEL McCALLUM: Yes, only two, I think, in the last elections. What we do to try to address those concerns of voters about the inconvenience is we do have a number of what we call multi-centres, so polling places, places within a council, for example, that have all the wards within that council where you can vote. Then on the borders, if you like, of local government areas, we also put in place multi-voting centres where you can vote, where it is achievable to have all the ballot papers and other material for the election at the neighbouring places. Again, I think Ms Summerell might be able to give you some more detail about those multi-centres if you wanted it.

The Hon. CHRIS RATH: Yes, I'm conscious of time, but maybe we'll come back to it later. I don't want to take up any more time.

Mr TIM JAMES: Thanks for a weighty and thoughtful submission. It's appreciated. I'm not sure if you were listening earlier or perhaps have had the chance to engage with some of the other submissions, but earlier on we had some discussion around a number of areas, two of which were, one, whether the Electoral Commission should be the arbiter of truth in political advertising and, two, whether our system here in New South Wales for State elections should go to compulsory preferential voting. I wanted to invite your comment on both of those and I guess confirm my understanding that presently the arrangement here is you have a disinformation register, but that goes to matters of process, conduct of the election rules and so on. It does not go to policies, positions and statements of people et cetera.

Secondly, I note with interest—and I'm keen to get this on the record—that compulsory voting, e.g. at the Federal level, has a higher informality rate. I note the 2022 Federal election had an informality rate of 5.2 per cent. The New South Wales State election in 2023 was 3.28 per cent. I think that's worth noting. So, clearly, I think it's fair to say that compulsory preferential voting is more complex and generates less formal voting. Can I invite your comment on both of those, given that we've heard some quite robust arguments from stakeholders that we should go down both paths?

RACHEL McCALLUM: I might just start with the disinformation register just to confirm that, yes, we do have such a register and we did model it on the Australian Electoral Commission's register from one election ago now. Yes, the content of that deals with, as you said, process-related matters rather than the truth of campaign statements, so it doesn't deal with truth in political advertising more broadly. The other two matters are policy questions, but perhaps I'll just take the truth in political advertising first. That is not something that many electoral commissions have the jurisdiction to regulate. I would think there would be a number of risks in giving the Electoral Commission in New South Wales that function.

As you know, we have actually two statutory entities, if you like. I'm appointed as the Electoral Commissioner and run the election event itself. I'm also a member of the Electoral Commission, which is a statutory authority, and that has the separate function of enforcing compliance with electoral laws, not just electoral funding, but also the campaign conduct rules that do exist, which are, as you sort of alluded to earlier, focused on the voting process and transparency around who's saying what and misleading in relation to how to cast a vote rather than the truth of the statement.

So the three-member commission has the functions in relation to that enforcement, and I would anticipate that if any thought was given to having that function in New South Wales, it's likely to be the commission rather than the commissioner because the point, as I recall, of the establishment of the commission as it is now is that it was to be an independent, separate enforcement entity so that the Electoral Commissioner could continue to administer the elections without being, I guess, pressured too much during an election event in relation to those enforcement matters.

I think truth in political advertising is something that would likely occupy a lot of time of whoever gets that function, and I think that my colleagues in other States have given evidence in various other forums that suggest that is the case. They are very focused on dealing with allegations during the event itself in relation to truth in advertising. I also think it runs the risk of not only diverting the person who's administering elections from

their core task, but it also risks bringing them into a debate that is possibly better left to the public to decide about the truth of the statements being made about policy positions or personal characteristics of the participants in the election. I'm not suggesting there shouldn't be any regulation of such matters, but I think who does it—I appreciate that it seems logical to give it to an organisation that's got "Electoral Commission" in its title, but there are potentially other ways in which you could look at it as a public policy transparency measure rather than inherently connected to the election itself.

In relation to the compulsory voting point, I would say again that's a policy question about how that should operate, but there's also a constitutional question about how that should operate, so the way in which the voting occurs is set out in the Constitution Act. But there are some times we observe when elections are close together between the Federal election and the State election—we surmise that confusion is caused when one is requiring you to fill in all the boxes and one you don't have to in order to cast a formal vote.

There definitely is benefit to having a similar voting system between State and Federal. We do observe that when elections are close together—and it may be that in the upcoming Federal election, when there's been a State by-election on now, it's worth having a look at the numbers there and seeing if there is any flow-on effect at the Federal level from the fact that the rules are different at the State level. But, again, I don't think I would have any particular for or against what type of voting system it should be.

Mr STEPHEN BALI: Just a few hopefully quick questions. Firstly, it's been raised with me that the vests that you guys wear—light blue, similar to the Liberal Party. Some ethnics groups have approached me saying that when they come to vote, especially if English is not their first language et cetera, with the perception of having two colours so similar, they think that if they're voting for "the" Government—even though they may be in opposition—that that raises confusion. I note that the Federal people wear purple. What would you suggest as far as an alternate colour that's a bit more neutral and should we then—I don't know, regulation or legislation—make sure that no political party reflects the colour of the Electoral Commission.

The CHAIR: Fashion advice, please.

RACHEL McCALLUM: Fashion advice, yes. The colour of the vests is something actually we've been talking about recently, not exactly in relation to the confusion that our wearers of blue vests are somehow connected to—

Mr STEPHEN BALI: It's been raised to me that some people—

The CHAIR: And with me, actually, by members of the subcontinental community, particularly.

RACHEL McCALLUM: I guess I would take that as feedback, if that's all right, and I might consider that further. We have thought about possibly introducing a new colour in relation to the voting centre managers within the polling places, or the voting centres, in order to allow them to be more obviously different to all the other officials in the room, because interaction does need to happen between that manager and the political participants who are there on the day, including scrutineers and the voters. I might take that as feedback, if that's all right. I haven't actually thought about changing for that reason alone, but purple is becoming a universally recognised electoral colour in Australia. I don't know how the AEC would feel if we started wearing purple as well. Perhaps we could ask them for permission.

Mr STEPHEN BALI: Probably a good thing—reduces confusion.

RACHEL McCALLUM: I don't think they own purple.

Mr NATHAN HAGARTY: Are you a Prince fan?

The CHAIR: They're not Cadbury.

RACHEL McCALLUM: We'll be playing *Purple Rain* in the voting centres.

Mr STEPHEN BALI: The other thing is the interaction between the Electoral Commission and volunteers on election day. There's been numerous instances where volunteers have not been allowed to have access to toilets, that on super hot days—I get the rules. Everyone applies the rules differently as far as the six-metre rule et cetera. If it's pouring or super hot, there are some schools where you do it in the assembly hall. It has an awning in front and you can easily do a six-metre curve.

I know some polling booths—particularly the one where I am, we'd prefer to be on the outside of the fence line. But I think there needs to be a little bit—to work out the local nuances. In your training of the senior polling station manager, can there be a bit more cohesiveness between—I know sometimes the volunteers may not act appropriately as well, but I think at eight in the morning, or 7.50 or so when you open a polling booth,

there should be at least cordial relations, and a having checklist that they should be saying to the volunteers there, as far as where they can stand et cetera, and having some negotiations.

RACHEL McCALLUM: Yes, I am aware that those issues do come up from time to time—

Mr STEPHEN BALI: They come up all the time.

RACHEL McCALLUM: Well, a lot of the time. If it's all right with you, I might ask Ms Summerell to answer that because she does live and breathe the procedural matters at the start of the day, and having cordial relations from the beginning of the day is something we absolutely do encourage our voting centre managers to establish, because it's a long day and it's a long night. That is something we're aware of, and I know that we sent a message out in the current election just talking about the issue of access to bathrooms and, where feasible, storage of the materials in the early voting centres and things like that. We are conscious that these issues come up and we have to strike that balance between running the election but also trying to accommodate some of the human needs of the volunteer candidate workers who turn up. But, if I could, I think Ms Summerell could probably set out some more details about the routine that we ask our local staff to follow in the morning.

ANDREA SUMMERELL: Thank you for raising this point. It is one we're trying to actively address. I think in the last two general elections, referring to the 2023 State election and the 2024 local government elections, we have increased our training around that stakeholder relationship and the importance of building your relationship with the candidate workers that are at your voting centre. As you would be aware, a lot of election staff come back election after election, so it does sometimes take some time to get that training embedded and that kind of change of view about how people work with the candidate workers. The instruction that we provide them is that all candidate workers should be having access to the toilets in the voting centre, so we would ask that any time those issues are being found at a voting centre, to raise that with us. Just for this election, as we were referring to, in Port Macquarie, we did a bit of a Google Earth on all of the locations to see where the six metres would fall to see what kind of messages we might need to have out to our candidate workers to support them about how they could find shade and if we had to make any adjustments around that six metres.

It is something that we're actively pursuing, but I do think there are some voting centre managers that have sometimes a very strict approach as to how they manage their centre, and we're making sure that does include building those relationships. As the commissioner mentioned, we do a briefing in the morning where the voting centre manager is to go out to the candidate workers and discuss with them as a group where the expectation is of where they will stand for their campaigning and do regular visits throughout the day to make sure that those relationships are cordial. It's something we will continue to build into our training, and we're aware that those circumstances from voting centre to voting centre can be different for candidate workers.

Mr STEPHEN BALI: The other aspect, if you want to save a little bit of money and time, I think the location of polling booths is another sore point. In my home town, where I've lived my entire life—50-odd years—probably for 50 of those years, at least, I've been on the polling booth, same place. But you've got a situation where now you're getting more and more people pre-voting, but you're opening up more and more polling booths in areas like, literally, 100 metres apart. Doonside is a case in point. Doonside High School and Crawford primary school—there's literally 150 metres between them. There is no reason to open up extra polling booths in those areas, compared to the new release areas, where I get that you need to open up new polling booths. But, whether it's local government elections or State elections, is there a way that maybe post or pre the next election—particularly post, once you implement the system—with the top two or three candidates plus one other randomly selected, you sit down and talk about where the locations were? Because you're employing more people.

Literally, if they're 100 metres apart, I'd rather it be at one polling booth where you put the extra workers. Especially where a place has been traditionally there for 50-odd years, if you suddenly open up another polling booth, no-one goes there because everyone traditionally goes to the high school. And it's harder to have the traditional sausage sizzle at every single school. So, essentially, can we have better negotiations about where the pre-poll stations—I know Blacktown council is kind of furious that you came up with 10 or 12 pre-poll stations. It just makes it really hard to promote or for volunteers to get there et cetera, when if you can have some predetermined larger locations better staffed—there needs to be some type of consultation with candidates or past candidates and the councils for local government about where these things are located.

RACHEL McCALLUM: In relation to the consultation piece with elected members, parties—participants—I think that is a good point. I have already written to all of the State registered parties—I haven't got to local government yet—to invite them to come in and talk to me about how they would like to see consultation about both operational and regulatory issues handled. I do intend to have a program of consultation about issues that matter to the participants, and polling place locations is an issue that matters. I appreciate that. I'll take that, again, as a feedback about what a topic of consultation might be in relation to those location issues. There are slightly different issues that arise in local government and the connection with our client councils in relation to

where we put the polling places in local government. We do try to maintain some consistency over time, because people are used to going to particular places and we are looking for ways in which to maintain or even increase voter participation, so that does assist in having that.

I can't talk to the specifics of the high school and primary school that you're referring to. There is a methodology to how we choose where to put voting centres, based on where the Federal elections are, where they've been in the past, the population, what our figures show us about the number of people who voted in those venues at the most recent election or over time. We do want to be data-driven in relation to where we put those voting centres, but I am interested to hear about the specific local issues that might be relevant to feed into our thinking in the lead-up to the State general election in 2027. That is something I can definitely take as a topic that political participants are interested in and might have some useful local knowledge to provide to us in our planning.

Mr STEPHEN BALI: I've just heard from councils, to your predecessors anyway, since they're paying for their election as well, they would put forward where they want to see the polling booths. That just seems like there is a brick wall when it comes to responding. As a suggestion, maybe have a look at it. I'm not saying that they're right—I don't know. But in my time when I was mayor, we tried to negotiate where the existing polling booths are, et cetera, and maybe demands for more. The Electoral Commission will just step in and say, "No, this is where they're going to be." So if you can look at that. And finally, I get the nuances of local government being so big—so many wards, so many questions—but I just don't see it being an absolute hindrance.

For every single question, you already have—the election taking place across the State doesn't stop to do a PDF for each one, and having a little printer at each polling booth, so if someone turns up that doesn't belong in Liverpool, or a Blacktown person goes to Liverpool for their holidays, they can't vote in Liverpool, because you can just press the button and there'll be a PDF that says you're in Ward 3, whatever, fill it out. This is the question. I just think we need to think through and make things easier instead of just coming up with reasons why we can't vote elsewhere. People travel, and people are working on Saturdays. They can't get back to their local government area.

RACHEL McCALLUM: In relation to the printing of ballot papers, I think it would be interesting to look at the next Federal election, whenever that is, but in the near future, as I do understand that is what is happening at that election. There will be printers in polling places. We'll look at that. Again, I would just say that is still a significant technology investment.

Mr STEPHEN BALI: Fifty bucks at Bunnings, or go to Officeworks.

RACHEL McCALLUM: When you multiply that by the number of polling places across the State and build in some potential redundancy as well—I'm not saying it's not doable. I'm just saying that it would require additional investment to make that work. Looping back to cybersecurity, you're printing ballot papers in a polling place. We'd want that to have integrity, that process itself.

Mr STEPHEN BALI: Have a scrutineer there present.

RACHEL McCALLUM: I'm not ruling it out. I'm just saying that under the current way in which these elections are run, that's a logistical challenge.

The CHAIR: Before I go to Ms Faehrmann, we've all got our favourite stories. Samuel Gilbert high school—during the last council campaign, people were making their way up to the only entrance, which was a very steep pathway. Then they reached the stairs. The local Liberal MP, to give him due respect, and all the other scrutineers who were there spent the day assisting people with prams, wheelchairs, et cetera, to get up and down, to get into the booth and then back down. There was an injury inside. The ambulance arrived and then couldn't get up the stairs to actually transport the person. That meant going around the other side of the school and opening back doors. How could that be approved, in these days of all the requirements in relation to accessibility, to ensure that people are engaged, participate and have confidence—let alone in terms of the laws that we've enacted in relation to disability over many years. How could that be allowed to actually be a place when it would not be allowed in commercial activities and virtually every other facility?

RACHEL McCALLUM: I don't know of the particular case, of course, but it is disappointing to hear that that was the only access to that particular voting centre. I can perhaps take on notice some of the specifics in response to that—

The CHAIR: Please take it on notice.

RACHEL McCALLUM: —but I would acknowledge that would be disappointing for all the reasons you've just outlined in relation to access up steep hills and stairs. Not all our voting centres are accessible. I can't say for sure, but I would imagine that that one would not have been marked as such on our website as somewhere that would be accessible. I absolutely acknowledge that people with prams, for example, would probably not be

thinking of it in those terms when they were deciding where to vote. I'll take the specifics, if I can, on notice, but I do acknowledge it sounds like a not very satisfactory voter experience. We do look to have, of course, within the local government area, in that case, venues that are fully accessible.

Schools are not necessarily always fully accessible as a voting centre, because we only take part of the school as our venue, and we don't control all of the rest of the school grounds. There are complications that come with if we were to have control of the full school grounds. That particular school may have proper access from different ways in, but it may be that on that case, we didn't have control of the school, and I will confirm that in my answer on notice. As a general proposition, there are challenges with the extent to which we rely very significantly on schools as voting centres, and they're part of the cultural fabric of elections, which is extremely positive most of the time. One of the drawbacks is that we don't generally take the whole school, and that means sometimes the accessibility that might be available to people who use it as a school is not necessarily available to us who rent it, because we rent them as a voting place.

The CHAIR: I understand. The supplementary part of that question is why should the Electoral Commission not be subject to the same requirements, in making access available for people with disabilities and differing abilities, to the rest of the community? Because this was access to the actual voting place and we made it impossible for people to actually get in there. Please, I don't want to put you on the spot.

RACHEL McCALLUM: No, I'll provide a full answer.

The CHAIR: Can I also, then, on the same topic—and this will be my last question. I've got lots of them after having done this for 50 years. In relation to the Victorian trials of having accessibility for people who have sensory, cognitive, hearing and visual impairments, there was a trial in relation to having low-sensory voting sessions available for people in Victoria. I was wondering if you have any advice or comment on the outcome of that trial, and whether you're considering it in New South Wales?

RACHEL McCALLUM: I might generally answer and say we are considering it for the State election in 2027. In terms of doing a proper analysis of what occurred in Victoria and in the ACT, I think that's still a way off in terms of mapping out what we might be able to do and what would be sensible to do for people who would prefer to have a low-sensory environment in which to vote. Obviously, they're trials. One, in a very small jurisdiction, has a dedicated place which would be reasonably accessible to all voters. That would not be the case in New South Wales, but it may be that we could trial that way in 2027.

Another way of doing it, which I believe was the Victorian way, was to set aside a time of day in which there was a general agreement amongst the political participants to keep things calm on the outside. Because that is one of the major deterrents, I suppose, for people who find that sort of noise and busyness too much of a barrier to participation. So it requires not just that the election officials are quiet and provide a quiet space, but that the whole environment in which the voting is occurring is suitable for those voters. We are thinking about it. We are grappling with those issues and how it can be done in a way that makes sense for this cohort of voters, that recognises them but isn't tokenistic, I suppose, in relation to where such facilities might be provided. Again, it might be that Ms Summerell could provide some more details about her understanding of how it's gone so far in Victoria and the ACT.

The CHAIR: Maybe I could come back to it if we've got time. If not, could you please take it on notice?

RACHEL McCALLUM: Yes.

The CHAIR: I think the Committee, in terms of our terms of reference, would be very interested in what progress you may make and what your thoughts are.

RACHEL McCALLUM: Yes, we will take that on notice.

Ms CATE FAEHRMANN: Thanks for coming today. I wanted to just get some more information about what the commission's doing about the high rate of informal voting that occurred in Toomelah—the very concerning high rate. I understand this Committee has been in discussion with you, and you've responded, stating that you're considering modifying your electoral material registration checklist. Firstly, could you just expand on what that is, and what you're doing in terms of expanding that?

RACHEL McCALLUM: I might ask Ms Summerell, who runs that process, to answer that question.

ANDREA SUMMERELL: When we were looking at the formality of the Toomelah polling place that you're referring to, we obviously went to look at what were the contributing factors to that high informal rate. One of the factors was looking at the registered electoral material that was approved for distribution at that polling place. On reflection, it wasn't as clear as it could be. There was reference to voting 1 for the elector and then a

picture of the directions of voting, which gave the elector the information that they would have had to vote for a minimum of five. That instruction wasn't as clear as it could be.

What we've done is look at the checklist that our staff use when they are reviewing electoral material that's been submitted, to make it clearer that, coming from the user's perspective, when you're looking at the instructions of the ballot, rather than just putting excerpts of our printed ballot on that material and hoping that direction is sufficient for electors to understand the voting requirement, having some of those messages associated with the "vote 1" to more clearly say, "Vote 1 and additional preferences, so that you have placed five preferences on the ballot paper." So just making that voting instruction clearer, so that we can be more sure that a person looking at that material will cast a formal vote—just tightening some of those rules around approval of material.

Ms CATE FAEHRMANN: In terms of the way in which that material was checked off, where does that go to? Did it go to somebody within the Electoral Commission in Sydney?

ANDREA SUMMERELL: Our electoral material registration process is centralised. So it is managed by the NSW Electoral Commission staff and headed by some of our permanent staff. It was more than 3,000 pieces of material that came into that centre, so we do have—

Ms CATE FAEHRMANN: For that election, do you mean?

ANDREA SUMMERELL: For that election—not for Moree Plains in particular, but for the local government general election. We have around 20 staff that we bring in to support that process. There's obviously an escalation process up to a supervisor, and then up to our head office. I think that the quantity of material that we were processing meant that item didn't get the attention that we could have if we had a smaller election and less material. So we have to reflect on what happened and build additional processes in to have that—you know, when you do have a large number of staff processing it, how could we avoid that going forward.

Ms CATE FAEHRMANN: Correct me if I'm wrong, but in terms of the powers you have to address something that you may see is not as clear, or is in fact incorrect on a how-to-vote card, you've got the powers to direct the participant, the political party, or the candidate to withdraw or change it. Is that including if it's not as clear? Because that's a subjective opinion, from your perspective, as opposed to something that's blatantly wrong.

ANDREA SUMMERELL: When we're reviewing electoral material, we're looking at a number of factors. One of those is does the material cause the person, in any way, to cast an informal vote? That's kind of our measure. There are degrees in that, as you say, and there was information on that material that said to at least mark five preferences, but we, on reflection, don't think that was clear enough. But it is something that is the person's interpretation of that. I think on reflection we've indicated that wasn't clear enough, and it's something that, as a lesson, we're taking into the next general election.

Ms CATE FAEHRMANN: I understand that in that communication with us as well, you've said that you're working with the Moree Plains Shire Council, looking at options to address the low formal vote rate. Could you comment on where that's up to, but also increasing First Nations participation, as well as the formality of votes more broadly, if there's work that the commission is doing in that regard?

ANDREA SUMMERELL: In respect to Moree Plains, myself, our election operations director and our communications team met with the council, both the general manager and a number of councillors, including the councillor whose votes were most impacted by the Toomelah vote. We met with them to talk through the process and recognised that there is more work we need to do to ensure that that formality rate is improved in the future. In addition to that, we are going to undertake analysis of formality across New South Wales with respect to the local government election because there are areas where we saw higher informality, so we want to understand more what work needs to be done. We've mentioned it in—we've got a report, the local government 2024 election report, that's just been finalised on Friday. It talks to the—and it's interesting what we were talking about before, about full compulsory voting, in that we've just, in some simple analysis, looked at the types of ballot and how the formality rate is different across those types.

As people would know, for a local government election there are very varying types of ballot papers, and the instructions to how to cast a formal vote are different from area to area and ward to ward, which is a challenge for us. But we're just looking at where there are groups present, where there are multiple groups and where there are no groups, what impact does that have to formality? That will be happening over the next couple of months. We'll have a look at the actual ballots and see what has driven those informalities, and see if we can come up with some kind of factor that is contributing more specifically to that.

And then I guess in addition to that—and this is kind of a commitment we gave to Moree Plains council—how can we work better with local groups to be able to get that voting message out? How are we making sure that people, when they are participating in the election—which we did see an increased participation at Toomelah

from previous elections—how can we better support the community to make sure their vote counts? We'll be doing that work. I've also reached out to the Australian Electoral Commission to get some additional messages to the staff in the Toomelah polling place for the upcoming Federal election and see what we can do there to make sure that those voting instructions, which will be different again for the Federal election, are clearly articulated.

Mr TIM JAMES: Can I take you back to the funding question, which I know has been dealt with in part. It's on page 36 of your submission. If I've understood it correctly, just in terms of recent years of budget asks and responses, you had your 2022-23 budget request met in full and then I think since then, without getting into all the detail, there's been a number of asks, some of which have not been accepted, some of which have been partially funded and some of which are stalled. If I can surmise, it looks like you're having a pretty tough time under this present Government. Indeed, you say you're in the "leanest funding environment the agency has experienced since 2013". So that makes that quite clear.

Mr STEPHEN BALI: Maybe you shouldn't have left us a \$187 billion debt.

Mr TIM JAMES: Maybe you should learn to manage money. Can I ask you, bearing in mind the risks which you point out quite clearly, namely you may not be able to comply with essential matters of work health and safety, privacy and more—and I note that you are determining. I'm on the top of page 36 here, which says, "which of our legislative obligations cannot or can no longer be appropriately met within our resource allocation". Bearing in mind your submission was August of last year, and we're some months now down the track, can I ask you where you are in terms of which of your legislative functions cannot be met and what is your outlook in terms of further necessary funding under this Government?

RACHEL McCALLUM: In terms of legislative obligations, I would prefer to characterise that as difficult to meet rather than cannot be met at this point. I have only come in December into this role, so I am conscious that when the Parliament passes legislation that confers on us an additional function, such as ballot paper logos, that the process of giving us that function is often separated from the funding that is necessary to implement it. So that is one of the examples that is highlighted in that submission from last year to this Committee, and that remains a significant challenge. At the moment we aren't funded specifically to implement that change. I made a determination that at the current Port Macquarie by-election we would offer registration, and that has happened.

Logos are being registered with us, so we have the capacity to register the logo in our existing system, so the challenge is how to get those logos onto all of the ballot papers for all of the 93 electorates. That remains a challenge. There is no funding specifically for that, but I am going back to ask for authority to redeploy some of our underspend for that. Some of the other statutory functions that are difficult to fund—well, we are a statutory authority, so everything we do has a legislative basis. None of it is a discretionary policy in the same way that departments may have many worthwhile programs, but they may not be legislative programs. Everything that we are doing is a legislative program.

So all of our enforcement work, our registration of materials that Ms Summerell was just referring to, that's a statutory function that relies upon an online system of lodgement. We are authorised under statute to enforce electoral laws, so there is a process of issuing thousands of fail-to-vote notices afterwards and then responding to those who choose to take those matters to court. That is a challenge to continue to fund without appropriate workforce resourcing. It is actually a statutory functioning of the Electoral Commission to offer education and voter awareness information programs, so we don't view that as a "nice to have". We view that as a critical part of our statutory functions for a regulator, as we both deliver the elections and as a regulator.

Most regulators, I think, would see that engagement piece with those that they regulate as a critical part of what they do. We are no different in that regard. All those regulatory functions which require engagement and education are statutory, in our case, and in relation to the voters, again, that is something that the commission also has the function of assisting me to run elections, and running awareness programs is part of that as well. So all of these statutory functions need to be resourced by people who understand the nuances of electoral administration and regulation, and so they are all, to a greater or lesser extent, at risk of being compromised if we are not receiving appropriate funding.

Mr TIM JAMES: Thank you. I understand completely. You say:

... we are determining which of our legislative obligations cannot – or can no longer – be appropriately met within our resource allocation. Government and the Committee—

that's us—

will be advised as these become known.

Are any of them known?

RACHEL McCALLUM: No. My view at this moment is that there are none that are known that we are taking the view that we cannot deliver. Right now I take the view that, if it's in the legislation, we should attempt to deliver it. The point we're at now is seeking the funding in order to be able to make that happen. All of the statutory functions that I referred to and that the submission referred to will be, to a greater or lesser extent, dependent upon whether or not we can secure some additional workforce funding and some additional systems maintenance funding. But at this point I would say I have not determined any will not be undertaken.

Mr TIM JAMES: I note, I guess, to surmise and to use your own words, you're saying "the agency faces an uncertain future". That's on page 8. So basically unless this funding request is met, you will be unable to fulfil your statutory roles in full?

RACHEL McCALLUM: In full, yes. It just raises risks of failures in relation to what our activities are. If we were to get to 2027 and have no capacity to get the registered logos onto the ballot papers as requested by the participants who request that, that raises a risk of failure for that election.

Mr NATHAN HAGARTY: Just reflecting on the previous comments about key person risk around technology, obviously those funding demands go well before 2023, but just on the cybersecurity issue, the Federal Government has its Essential Eight maturity model. I don't know how across this you guys are, but you can take it on notice. I'd like to know have you done an Essential Eight assessment, where are you guys at, and what's the pathway to get it to where it needs to be, if it isn't already there?

RACHEL McCALLUM: Yes, we are aware of the Essential Eight and we do assess our maturity against that, and against the mandatory requirements of the NSW Cyber Security Policy as well. We're in a constant state of assessing our risk in relation to cybersecurity but also using the New South Wales mandatory requirements in the Cyber Security Policy to frame our program for cybersecurity uplift. I might take it on notice to give you an answer about where exactly we are in that maturity level, but we are always referencing those standards that apply to all of the public sector and indeed, in terms of the Essential Eight, more broadly across the economy.

We are assessing against that and, as I mentioned before, in this budget round we are seeking cybersecurity supplementation, which is part of the—we received funding from the Digital Restart Fund in order to procure and undertake a lot of work, but there needs to be ongoing licensing and various ongoing costs which need to be provided as well to make that investment realise the kind of benefits that we're hoping for. That is something that is hopefully going to be considered favourably this year.

Mr NATHAN HAGARTY: Changing the topic, there was a discussion during Mr Rath's session about when there's booths that are on the borders during local government elections. I know there were two LGAs that outsourced their election, not to the Electoral Commission. Obviously that arrangement where it's on the border, a multi-LGA booth wasn't possible. Can you talk about that and any other difficulties that came about with the private engagement of elections by those two LGAs, any other issues that came about?

RACHEL McCALLUM: I might ask Ms Summerell to answer that, because she was actually here for that election. Although there are some generic comments I could make about the general problems that might arise where there's an election provider other than us, but we still have—as I mentioned before, there's that difference between the Electoral Commissioner and the Electoral Commission. The commission still needs to deal with the enforcement of conduct that might arise, including failing to vote at those elections. There are issues that do come up in the context of those elections for us that are more complex because they're not our people who are administering the election itself.

I think there is a complication that I've observed when I was at the commission before in relation to local government in those contexts. It's not a reflection on that provider; it's just a structural issue around there are some functions that it must provide under those arrangements of outsourcing—not outsourcing but contestability, in that market, to call it a market; I don't really see it as a market but it's a contestability situation—on the enforcement side and the integrity side. I think there are tensions there. But in relation to the specifics of those elections to do with voters, I might ask Ms Summerell.

ANDREA SUMMERELL: Thank you, yes. The decision was made that where a NSW Electoral Commission-run booth was on the border of a council where an election service provider was delivering that election it was presenting too many challenges to have a multi-council voting centre. That's for a number of reasons. Obviously we did think about it a lot because, for electors, that has an impact. Although we're both running elections within the legislative framework, there are some process and staffing differences between the service providers. That presented a challenge where there were some differences in the way that the staff instructions and processes were between the two, and also us making sure that the things that we manage are within our control.

The multi-council process for cross-election service provider was a difficult one for us to be able to operate, so we made the decision that, in those cases, we would just stick within our local government boundary. We did look to go out and communicate with electors that would be impacted if they voted in some of those voting centres previously, just to make sure that they were aware that, going into this election, this would be the voting centre that was available to them. The only other challenges I would talk about in relation to election service providers that the commissioner hasn't already covered is it comes down to the electors understanding that there are differences between the service provision.

That could be particularly in our stakeholder reference groups, where there might be certain processes and resources that we have available to support people with additional needs. We can't compel the election service provider to be able to provide those as well. The one example around technology-assisted voting, that is available for the councils that are conducted by the NSW Electoral Commission but not to the election service provider. So we have to make sure that those messages are very clearly communicated to our stakeholder reference groups. I think there's sometimes some confusion about that different level of service provision for those stakeholder groups.

Mr NATHAN HAGARTY: Given that extensive list of difficulty and challenges, and given the point of this inquiry is proposals to increase voter engagement, participation and confidence, what I'm hearing here is that if it was mandated that every LGA had to use the one provider—presumably the NSW Electoral Commission—given the experience recently, that would actually be very likely to lead to increased voter engagement, participation and confidence, especially where there are those neighbouring LGAs that you spoke about.

ANDREA SUMMERELL: That's a policy matter. But obviously where there is one provider delivering the service for all local government areas, there is a level of consistency that comes from that.

Mr NATHAN HAGARTY: And there's an ability for people with technology-assisted voting and all that to be easier to vote, so there's quite a few benefits to that.

ANDREA SUMMERELL: Under the current legislation, it's only the NSW Electoral Commission that can provide technology-assisted voting.

Mr NATHAN HAGARTY: Commissioner, would you like to add to that one?

RACHEL McCALLUM: It is a policy question whether contestability should be part of a local government election framework. My personal view is that it has added complications to the delivery of the elections. There are many of them. That's the complexity of local government. I would agree that I think there would be benefits for voters if the Electoral Commission was exercising its functions across the whole State, in part because there are efficiencies that are generated by having one election service provider doing things like voter awareness campaigns and stakeholder engagement. I would agree that there are benefits from that—again, absolutely no reflection on other providers who may be providing services. But, in terms of that broader policy question, I can see that there would be potential benefits to it.

The CHAIR: I have a significant number of other questions as the Chair, but I might forward those to you and ask you if you would take them on notice. I promise both Mr Bergeron and Ms Brandon that we will have a specific section for you at our next meeting. I apologise for not going down the rabbit hole in relation to your particular areas of expertise, but we'll certainly have a list next time, so thank you. You'll be provided with a copy of the transcript of your evidence for corrections. Committee staff will also email any questions taken on notice from today, and any supplementary questions from the Committee. Can I again, as we always do, thank you very much for your expertise. Thank you very much for appearing, being so open and providing such good evidence to us today. It will allow us to do our job and, we hope, to obviously assist you in doing yours on behalf of the people of New South Wales. Thank you very much for coming today.

(The witnesses withdrew.)

(Luncheon adjournment)

Dr HAMMOND PEARCE, affirmed and examined

Associate Professor VANESSA TEAGUE, before the Committee via videoconference, affirmed and examined

The CHAIR: Welcome to you both. Thank you for appearing before the Committee today to give evidence. Please note the Committee staff will be taking photos and videos during the hearing. The photos and videos may be used for social media and public engagement purposes on the Legislative Assembly's social media pages and websites. Please inform the Committee staff if you object to having photos and videos taken. Before we start, can I ask both of you, do you have any questions about the hearing process?

HAMMOND PEARCE: No.

VANESSA TEAGUE: No.

The CHAIR: Dr Pearce, would you like to make a short opening statement?

HAMMOND PEARCE: Thank you very much, Chair and the others in the Committee, for giving us the opportunity to give evidence today. I appear today as an individual member of the UNSW Institute for Cyber Security. To open, I'd like to quickly reiterate our perspective on technology-assisted voting as provided in our submission, which is that, fundamentally, we believe Australia's existing paper-based system is not broken. Moving wholesale to electronic voting poses both high costs and high risks, with no clear benefits. Our overall recommendation is to approach technology-assisted voting with caution, focusing on incremental, secure innovations that help specific groups rather than widespread electronic adoption.

This is firstly because of trust. The most important feature of a voting system to have is trust in the results. Paper-based voting is straightforward and understandable by ordinary citizens, but electronic systems are difficult to scrutinise, making them fundamentally less trustworthy. It is known that electronic attacks can scale quickly and covertly in a way that paper-based vote tampering cannot, meaning that even if experts deem an electronic election secure, conspiracy theories can spread and undermine public confidence. Secondly, on cost, electronic voting can easily be prohibitively expensive, exceeding hundreds of millions of dollars for machine purchases, maintenance, storage and eventual disposal, particularly given that electronic kiosks have limited lifespans.

Thirdly, on accessibility, a wide deployment of technology-assisted voting will likely reduce the number of physical voting stations over time, disadvantaging people who lack digital access or skills, and leading to the loss of institutional knowledge required to operate large paper-based elections. This said, we recognise that certain groups, such as voters with disabilities, do benefit from tailored support. We therefore agree with the Electoral Commission's report on technology-assisted voting, which concluded that limited and carefully managed tech solutions like reader or phone-based systems can improve accessibility for a small segment of voters without compromising overall election trust. The key is that access to those technology-assisted voting systems should be limited to only those that need them.

VANESSA TEAGUE: I'll just very quickly reiterate what was in my submission and which I've said to this Committee many times before, which is really that running elections with computers has essentially the same requirements as running elections manually, not just counting accurately, but running a transparent process that shows observers and the public evidence that the votes have been accurately counted while maintaining the privacy of those individual votes. Computers actually make that harder not easier. It's not just an ordinary cybersecurity problem; it's actually a very specific set of technical challenges about giving everybody evidence while maintaining individual privacy. It's hard.

There are plenty of sensible things that we can do to take advantage of the efficiencies of computerised processes, but I think that New South Wales in particular has been very gung-ho in grabbing onto what were perceived as efficiencies while forgetting the fundamental requirements of how to run a good election. I think there are alternatives to internet voting that are much better. We could put computers in a polling place with a voter verifiable paper record. We can do computerised counting of paper votes with a proper audit process and lots of other things as well.

Mr STEPHEN BALI: To a large extent, just to declare my interest, I love paper voting, but as a dinosaur trying to come into the modern era—

The CHAIR: Who is the question directed to?

Mr STEPHEN BALI: Both, really, because we're talking about electronic voting. I suppose the counterargument is that we're trying to get more youth engagement, and the modern generation, I suppose. If you're saying there's problems with the computer technology to vote, then how do we—I get it that sometimes bank accounts are compromised, but generally the system is fairly secure for your banks, for your Medicare

information and Service Australia et cetera. Why is it that we can't develop an app, a system or whatever that's foolproof? Just like your banking and all of your financial details are secured, why can't you just simply vote? This is the counterargument that we often hear from the public.

The CHAIR: Maybe I'll ask Dr Pearce to respond first and then Professor Teague.

HAMMOND PEARCE: The biggest challenge that voting has as opposed to other types of technology, like bank accounts or Facebook or whatever, is the need for the secret ballot in order for your vote to be able to be counted while no-one can work out the specific way that you voted. That's very different from, say, a bank account where you want to be able to prove that you have a certain number of dollars in your account or something like that. Ensuring, from a technology point of view, that my vote is counted while it can't be ascribed back to me is a very challenging prospect, and the only way to do it with technology is with very large complicated maths equations and zero knowledge proofs and things like that.

Mathematically it can be done, but the difficulty is it becomes inscrutable for the layperson. It's much easier to say that I tick a piece of paper, I put it in a box, which is closed, and then we shuffle it all up with everyone else's votes. You saw the box was empty, you saw us fill the box, and now we count the votes. We can have confidence that that system works just by looking at it. With digital voting, because we can't just maintain a spreadsheet of everyone's names and how they voted, it becomes very difficult to know for sure and to prove for sure that votes have been counted in the way that they were cast. This says nothing of the actual implementation of the system itself.

My background is actually in hardware security, so I look at the security of physical machines, like voting machines. You can't easily tell what a computer is told to do just by looking at the computer. With a bank account, we can audit. We know that our money is protected by legislation, in other words. If I put some money in the bank, I have some guarantees that if I try go to the bank and get that money out, not only does the bank have the reputation of a bank it needs to uphold, but also there are rules and laws that protect that money in the bank, so that if something does go wrong from a technology point of view, there are ways to recover it. With an election, some of those protections aren't there. I can't prove how I voted after an election. That's one of the other ways of the secret ballot. So, yes, there's just a lot of these kind of challenges that make voting a uniquely difficult prospect from a technology point of view.

Mr STEPHEN BALI: May I just respond—

The CHAIR: Can I just ask Professor Teague if she has a comment?

VANESSA TEAGUE: Yes, I agree with everything that Dr Pearce just said, and also I would add, just think about the fraud rate for banking, right? That's the perfect example. It's not zero; it's whatever is good enough that the bank can still make a buck. Go and ask a banker or somebody with expertise in online banking how much they lose to fraud every year. It's not zero. It's not a lot. It's some percentage, and then ask yourself what the margin in the last election you cared about was and what fraction of fraud is okay with you. Electronic voting is much harder, and it has much higher stakes.

Mr STEPHEN BALI: Just to follow up, because you were talking about reputation and talking about putting in. As I said before, I'm a big fan of the paper-based system, but just trying to make sure we have the right arguments of supporting the paper-based system. We've got the reputation risk of the Electoral Commission, so that is equivalent to banks. When you postal vote, you go through a process of putting your vote into another envelope that goes into an envelope to get sent through. I'm no computer whiz, but isn't there a way of you go through the first gateway to register—you could have your Service NSW account number or Service Australia account number—and then that opens up the second door, where, once you've been identified, the second door is like the typical postal vote that you go somewhere else to vote. I just thought in the modern era of technology there is a way to do it but I also pick up—it's a point that I raised earlier today: what level of risk a person's prepared to take, especially with informal votes and all that stuff. But putting that to one side, how do you respond to that?

HAMMOND PEARCE: Once again, it comes down to the inscrutability of computers. You can certainly make a computer look like it has this double box system and that your vote goes into a database that is recording it, but there's no physical way for you to check that. I can physically check an envelope, and although postal votes do have the potential for fraud through the postal system, none of those attacks, so called, scale well. You could change a handful of votes maybe and get away with it. Changing large numbers of votes would be extremely difficult. Electronic attacks—if you can change one vote, you can change lots of votes. They scale very well. Again, it comes back to this physical notion of voting. I can put a number onto a computer, but I can also design that computer to change that vote.

Mr STEPHEN BALI: But the system would be audited before you put it online. I assume you can have a couple of different levels of someone examining and checking and the post implementation audit or even as it's going because, according to my understanding of computers, you can back up systems, so you can have every 10 minutes a backup.

HAMMOND PEARCE: Yes.

Mr STEPHEN BALI: If someone's infiltrated a system and compromised it all, at least you know up to 10 minutes ago everything was safe and that was okay. I just think that there ought to be some type of legitimate ways of—I know we may not be there yet, but the stuff that you're talking about, in the physical world there are audits and checks and balances.

HAMMOND PEARCE: The two things that I'd say there is, one, yes, you can get someone to audit your computer system, but then you're relying on the auditor. You're relying on a technical expert to tell you that your election is secure. As a common person, I can't just go open the cardboard box and see there's nothing else in there. So that's that layer of trust that we're talking about there. You're shifting the trust from a very physical process that every voter can understand—votes go in a box and then they get counted—to ones where only technical experts can understand, and then you have to rely on the testimony or attestation of those experts. That can be a problem, as we've seen in other election systems around the world when certain voting experts claim one thing and other voting experts claim other things, and it becomes a bit of a battle of experts at that point.

The Hon. ROBERT BORSAK: I think you're thrashing a dead horse there, Steve.

The CHAIR: Can I ask Professor Teague if she has any comments before I go to the Deputy Chair?

VANESSA TEAGUE: There's a long history in New South Wales of this, of course, as you know. The iVote system got very extensive blessings from cyber experts who had been engaged by the Electoral Commission to certify the code in advance of the election. We do not have any certification standards in Australia, so it takes a certain kind of expert to certify something in the context of there actually being no certification standards for that thing in the country in question. My research group has found serious vulnerabilities basically every year that it has run, despite it having been supposedly through some sort of certification process. I won't re-read you the long list, but the vulnerabilities varied from opportunities for third parties on the internet to manipulate and read votes through to cryptographic errors that allowed for a supposed proof of proper mixing of the votes in the end process to actually be altered in such a way that other votes could be substituted instead. In short, it's not just a problem that only experts can understand the proof that it's perfectly valid. The problem is that even experts will not necessarily notice very serious problems that can, in fact, allow for large-scale undetectable manipulation.

The Hon. ROBERT BORSAK: This morning we heard from the commissioner, and she gave quite an extensive submission, but one of the key areas of interest for me was that she was saying that it would be a really good idea if we could develop this idea. We heard it from the previous commissioner as well that there should be a national standard or a single platform developed centrally in Canberra. "Trust me, I'm here to help you, and I'm from the Canberra bureaucracy." Would you like to comment on that? I've got my own severe doubts in relation to that, but perhaps to you, Associate Professor, what do you think about that?

VANESSA TEAGUE: Yes. I think that's a terrible idea, and it does seem to pop up like a brilliant new idea that might work instead of a terrible old idea that really hasn't worked. This already was the grand plan of iVote if you might remember. In the beginning, the whole concept was that New South Wales was going to develop this wonderful system and they were going to run internet voting as a service and all of the other electoral commissions were going to be trying it and so forth, and that, to some extent, was going to offset the cost of the initial development. Very few of the other electoral commissions ever showed much interest, to the best of my knowledge. I believe Western Australia signed up for a small trial once and didn't repeat. I'm not exactly sure why. But it's really important to remember that one size does not fit all.

Even though Australia's electoral commissions have some things in common, they also have some significant differences. Legislation is quite different across the different jurisdictions. Risk appetites are quite different, I think, probably just depending on the personality of the commissioner, to be honest. I really just don't see that working at all. I already wrote this example in my submission, but I'll just say it again. New South Wales has this rule that says you're not allowed to share the source code without the commissioner's permission, or you can be jailed. It's entirely plausible that some other jurisdiction could come up with a rule that says the source code must be openly available to scrutiny for the public, for example, and then you'd have one great system and two flat-out contradictory pieces of legislation.

The Hon. ROBERT BORSAK: That was going to be my next question. I remember getting submissions in years past—parliaments past—where it was being touted that if we could somehow or other have an open-source software platform that everyone would know and understand it and everyone would know what it

was before we went live and all those sorts of things that somehow trust would be enhanced. Do you want to comment on that?

VANESSA TEAGUE: I think that would be better, yes. I don't think it makes it secure, but it makes it a lot harder to oversell, it is a very good transparency property, and it makes it a lot easier to have a ground truth about which conversations about its properties can then be held. Rather than kind of pointing at it and saying, "I don't really think that's true", one can have kind of clear facts of the case available for discussion. I would say just in answer to your previous question, although I don't think a single grand unified national system is a good idea, I do think that there's an alternative kind of middle ground based on an open-source model that could be a lot better. The model here would be instead of one giant system that was supposed to fit everyone, there would be a series of different open-source code bases that each of the different electoral commissions could work on.

Again, I think internet voting is still a terrible idea but, for example, if a kiosk model was adopted, the same thing would apply, and the idea here would be one electoral commission might get started first. They could develop in the open and make their code available under one of the open licences, and then another electoral commission that wanted to adopt that code, rather than having to buy it or use it as it was, take it or leave it, they could potentially customise it to their own needs, use the bits that were common, adapt and change the bits that they wanted to be different, and then use that. I have seen this model work very well in the United States for risk-limiting audit software, and I don't know why it doesn't get done in Australia. It's kind of the perfect solution, I think, for public bodies that have slightly different requirements.

HAMMOND PEARCE: Open-source code would definitely help. It doesn't solve the problem of the hardware unless the hardware is itself open source, which is a little bit less common than open-source software. Code does not run in isolation. It must be run on a machine. Where do you get those machines from? Are they going to be produced in Australia, which doesn't have a—

The Hon. ROBERT BORSAK: Well, they'll be made in China, of course.

HAMMOND PEARCE: Yes.

The Hon. ROBERT BORSAK: We all know we can trust China.

HAMMOND PEARCE: Yes. That's one of the things you have to reflect on, right? Where are your physical machines coming from that are going to be running the code? It's plausible and possible and has been demonstrated that you can hide code on physical machines, which then get deployed and then surprising things can happen when you least expect it. One of the things that I would want to note is about even if you've got the open-source code, that code is still running on a system which itself needs to be separately considered.

The Hon. ROBERT BORSAK: That's right. What you're saying is if the open source is there and people can interrogate it, it's not necessarily all the code that it's going to be running on.

HAMMOND PEARCE: That's exactly right.

The Hon. ROBERT BORSAK: Yes, that's right. Open source, too, also opens the source up to people who are looking to get into the system, so they'll understand it better than the average person. They'll be able to get into it quickly and more easily because it is open source.

HAMMOND PEARCE: Yes and no. In general, when systems have been open sourced, they tend to have a much higher security than their closed-source competitors for that very reason. There are lots of so-called white hat hackers and researchers like Professor Teague—

The Hon. ROBERT BORSAK: That's what tends to happen.

HAMMOND PEARCE: Yes, who will hopefully find—sunlight is the best disinfectant thing. If you compare something—vaguely technical, but something like Linux to Windows, Linux tends to have more security, but it's because it can have more scrutiny that way, so odd bugs can be found quicker and patched hopefully faster.

The Hon. ROBERT BORSAK: Do you think computer-aided paper-based voting at each of the polling places is a possible solution for speeding up the process and making it more efficient?

HAMMOND PEARCE: Yes and no. The process of counting with counting machines that count physical ballots or, if you have kiosks, that print physical ballots, those will speed things up from the point of view of hopefully knowing the results on the day, but those do have to be paired with audit mechanisms, because otherwise you might have these paper ballots that don't actually reflect the result that you've actually collected. Also, you have problems with scanning. There's always going to be a margin of error for counting anyway. One thing to note, though, is that when you go to these expensive systems which are essentially computers that print

physical ballots, at that point you've just got a very expensive pen. Sometimes they help and sometimes you're spending a lot of money for what you could achieve with much cheaper solutions.

The Hon. ROBERT BORSAK: Professor, do you want to say something about that?

VANESSA TEAGUE: I think the very expensive pen solution might be a very good solution for people who are not able to wield their own pen. I think that's a good method of improving accessibility assuming, of course, that the person gets a chance to actually check the printout that gets made. I agree with Dr Pearce. It's probably not adding enough to an ordinary able-bodied person's experience to make it worth the expense and, if anything, it probably slows down a fast-sighted person with their own pencil. But as a solution for voters with disabilities, I think it's potentially the best trade-off that we've got.

The Hon. ROBERT BORSAK: I suppose really what we're saying here is confidence in scrutineering is really what we're talking about. The first line of scrutineering, especially in the lower House count—not so easy to scrutineer the upper House vote in this place—is the political parties themselves. If they lose trust in the process of counting, what chance have we got of keeping the general community who are out there voting onside and confident with the political process in exercising their vote? Do you see that changing in any way, or will you just continue that the way it is now with the paper-based voting? Could you automate that from a systems point of view and perhaps get summaries that you could drill down on, for example? I don't think that exists at the moment. Sorry, I'm addressing either of you. I'm just thinking about, first of all, speeding up the count process in a verifiable way and also then guaranteeing that the political parties have the ability to drill down and actually verify, rather than having to run around and open up a roll of votes, take the elastic band off and actually see that it said 20 National Party votes, and they actually are National Party votes.

VANESSA TEAGUE: First of all, I think the existing system is pretty good, right? It's pretty good at the moment to be sitting there in the polling place looking at the count of the pieces of paper. I think over the last few years a lot of my research has focused on auditing of computerised counting, and it is kind of doable. It's still not really doable for the STV count in the Legislative Council.

But there are processes for augmenting the computerised count of paper ballots with a randomised process for pulling out a random sample of paper ballots and comparing them with the electronic record that the computerised count made and doing rigorous analysis of whether you've got enough evidence that the error rate is low. I think that's worth doing. In the last hearing, I advocated some legislative change to mandate an auditing process on top of the electronic count for that reason. There is already corresponding legislation at the Federal level. If it's done well, it could be done well in a way that scrutineers can meaningfully observe that that audit is being conducted correctly.

HAMMOND PEARCE: I think the associate professor covered everything that I would have said.

The Hon. CHRIS RATH: Thank you for coming today. I wanted to ask if you've looked at any jurisdictions around the world and do any of them do electronic voting well? If they don't do electronic voting well, do any of them come close, in your experience, from almost getting there? To both of you.

HAMMOND PEARCE: The big one is that if you're doing electronic voting and you want to do it well, there has to be a paper-based record that's produced along with your votes, and the voters should be checking those as it's being produced. You go back to the expensive pen argument: maybe if that pen helps you count votes quicker, that's of value to you. What you don't want are systems that don't have those ballots. There was an incidence, I believe, in the US state of Georgia one or two election cycles ago where someone wanted to audit the non-paper-based voting counts. It turned out that the databases simply did not exist anymore. They'd already been erased post-election, according to their rules over there. Not only did they have no paper-based evidence that the votes were cast the way they were, they'd also got rid of the electronic evidence. That would be an example where I would consider the electronic voting system to be quite troublesome.

Each year, there's a security conference called DEF CON, and they host something called the Voting Village. This is over in Las Vegas, in the US. They take voting machines from all around the world, and particularly around America. They put them in a room with a bunch of people who are interested in hacking, and they go, "Go wild. What can you do?" Every year, within minutes, most of those voting machines get compromised, just to give you an idea of how poorly most of them are actually made.

VANESSA TEAGUE: Again, I agree with Dr Pearce entirely. There isn't really a good way of doing it without a paper record. If the question was specifically are there good examples of internet voting systems, I would say the example of the process that I know of, which is better than most, is the Swiss process. After the cryptographic vulnerabilities that we found back in 2019 in iVote and in the Swiss internet voting system, the NSW Electoral Commission just kind of barrelled forward. The Swiss authorities stopped and really pulled it all apart from the beginning. They upped their transparency requirements and the conditions under which the source

code had to be open. They already had, but they beefed up, a very strong set of requirements about the security and privacy and verifiability of the process.

The Swiss regulations about internet voting are extremely detailed and extremely tough. I still don't think internet voting is a good idea. I always feel conflicted about saying, "Don't do it again, it's a terrible idea, but if you felt like doing it again, then do it that way," but I will anyway. I still think it's a terrible idea—we do not actually know how to do it in a way that is adequately secured—but if you were going to do it again, I think there's a huge responsibility to write a set of transparency rules and specific regulations that demand a very high set of standards. At the moment, there's almost nothing in New South Wales.

The Hon. CHRIS RATH: In your opening statement, you said that rather than electronic voting or internet voting, we can use technology to assist, essentially, what we've already got. Have you looked at electronic mark-off for voters when they vote on election day? Do you think that might be something that we could consider as a jurisdiction?

VANESSA TEAGUE: I think you asked me this last time, and I have not.

The Hon. CHRIS RATH: That would have been over a year ago now.

VANESSA TEAGUE: As a research question, I have not. I think it's fine, and it does have advantages, because the advantage would be real-time double-checking. Somebody who shows up in one polling place and then five minutes later shows up in a different polling place, you would hope that the electronic system would detect that, whereas the paper-based system does not detect that. I think the requirement would be elegant fallback in the case that the electronic system fails. It has to be surrounded by a set of processes that say, "If the computer says no but the citizen insists that they haven't voted already, what's our process for dealing appropriately with that situation and ensuring that the person isn't disenfranchised because of a computer glitch?"

The Hon. CHRIS RATH: Like some sort of declaration vote.

The CHAIR: Dr Pearce, do you have any comments on that question?

HAMMOND PEARCE: I think that, again, it comes back to the trust in whatever electronic system that you have. I think Professor Teague has hit the nail on the head when it comes to what do you do if the citizen has insisted that they've not actually voted? In the US, one of the major things that seems to cause a lot of controversy is these so-called voter rules and voter disenfranchisement. They create all of these rules at polling places, like you have to have matching signatures and two different types of photo ID in some states and things like that. You want to be very careful that you don't accidentally go into a system that is open for abuse.

The Hon. CHRIS RATH: I'm not talking about voter ID. I'm talking more about the mark-off.

HAMMOND PEARCE: If a computer says no, that's the thing. It's a computer glitch that can have the same consequences. Will the voter just go home if they're told, "The system says that you've already voted"? Because then you can have a deliberately unreliable system as a technique for disenfranchisement.

Mr NATHAN HAGARTY: Every few years or so, there's a bit of technology that comes along, it's going to save the world, and in the end, after a lot of consultants, has a very limited application. Whatever happened to blockchain?

The Hon. ROBERT BORSAK: It got hacked.

HAMMOND PEARCE: Blockchain is still around. It's absolutely not a technique for elections, because it, once again, usually fails that sort of security ballot need. There are certain voting things done for various online communities that do use blockchain. It is around as a technology still, but certainly the hype has worn off. I think the new hype is generative AI.

Mr NATHAN HAGARTY: I'm with you on that one. No AI?

HAMMOND PEARCE: I don't think there's a generative AI solution to voting, no.

Mr NATHAN HAGARTY: Just punch it into ChatGPT who should be the Premier and we go from there.

The CHAIR: Professor Teague, do you have a comment?

VANESSA TEAGUE: No, thank you, Chair. I'm happy to let that one go past.

The Hon. NICHOLE OVERALL: I'm very interested to come back to the point that you made around banks and fraud, and, as you suggested, it's not zero fraud that they deal with. When we're talking about electoral fraud, you acknowledge that there is or can be or at least perceive to be issues with paper voting around that, and

potentially growing in that regard, electoral fraud we can't entirely rule out under the current system. Historically speaking, there's been many a famous, or infamous, case of the dead voting that has changed elections. Are you suggesting that it's the scale of what we could be seeing in paper voting if things go awry, compared to what might happen with electronic voting?

HAMMOND PEARCE: I think the very fact that you can point to specific cases that were caught because of paper voting are why—

The Hon. NICHOLE OVERALL: But we don't know the ones that weren't caught.

HAMMOND PEARCE: That's the problem with the technology voting. It is much harder in many cases to observe that a flaw has happened or an exploit has happened. With paper-based voting, because it has been used for hundreds of years in various places around the world, almost every exploit has been tried and has been thought up, and defences for them have been constructed. Technology voting and electronic voting is still so new that we still haven't even necessarily come up with all the possible ways it can be attacked, and detecting all of the possible ways that it can be attacked is equally challenging, if not more so. I think it comes back to the fact that, with paper voting, there are many ways that we can detect that something has gone wrong and we can do something about it. With electronic voting, that just becomes much harder.

VANESSA TEAGUE: Yes, I agree with Dr Pearce. It's about scale and detectability. It's not that postal voting is perfect, in particular. It's not great; I wish we did less of it. But just the fact that we do catch people is actually good news, in my opinion. I think you would really struggle to have a substantial impact on Australian postal voting as a single person, whereas the risk with, particularly, an internet-based electronic voting system is that it is potentially subject to attack from a very small number of people, who don't even need to be in Australia.

The Hon. NICHOLE OVERALL: As you've pointed out there, Dr Pearce, with rapidly changing technology, as we're seeing—AI has already been raised—the potential for more and more opportunities and more and more holes in an electronic system becomes ever more exacerbated as we go on, rather than lessened, potentially.

HAMMOND PEARCE: Yes, and on that note, I just thought of one more thing I wanted to add to my previous answer as well in terms of different types of attacks. It's not a federal election, but in the US a couple of years ago they were running a Democratic primary which used primarily electronic voting and electronic kiosks. As it's turned out, it wasn't necessarily attacked, although it might have been. But when the election actually started for that primary process, all their servers got overloaded because of the number of computers that people were trying to vote on, and they hadn't allocated enough capacity or whatever. The long and the short of it was the servers crashed and then the voting became very difficult. They had to fall back to paper-based voting, which had problems.

The point is that when you're relying on these computers, they have new and interesting attack vectors that paper doesn't have, one of those being susceptibility to things like large online disruption of services. This is something that happens to many websites today. A lot of them have to be protected from so-called distributed denial of service attacks. I assume the New South Wales website is one of those ones that need to be protected from these kinds of things. When you have systems like elections, which are time critical—the election is today; we're all going to vote today on our computers at home or on machines—that opens the potential for someone to disrupt it, even from overseas, simply by flooding the local country's networks with disruptive content, essentially just noisy packets. An individual can do that. One well-connected individual could disrupt hundreds of polling stations. That can't be done very easily with a paper-based system.

The Hon. NICHOLE OVERALL: Even when it comes to open source and talking about the potential for greater transparency, the security can't necessarily be guaranteed. There was that example at the end of last year, wasn't there, that some fellow, completely by accident, found quite the Trojan Horse through open-source code. But it wasn't that they were looking for it; he literally stumbled across it. If that's happening in those circumstances, where they are actively looking for things but things still get through, this is potentially problematic when it comes to things like electronic voting.

HAMMOND PEARCE: Yes, you're absolutely correct. I think you're referring to the XZ.

The Hon. NICHOLE OVERALL: That's the one, yes.

HAMMOND PEARCE: Again, that was only caught because there was a volunteer that was just poking through it, exactly as you said.

The Hon. NICHOLE OVERALL: And he still didn't realise that he'd caught it until he had to go and verify that as well, so it can most certainly happen. Just quickly, then, would you acknowledge that there is a strong call generally from the public for our voting system to be modernised, as such? So public education around

that—how do we build that trust and ensure that the community is more aware that what we're doing is, as you have said, Professor Teague, actually a pretty good system?

HAMMOND PEARCE: I was going to let Professor Teague answer but she's still thinking, so I'll talk. I think it comes back to the—it's almost the responsibility of the Electoral Commission to say, "This is a paper system because of these reasons". Yes, it's more inconvenient than voting on your phone, but there are a lot of benefits that we have because it's a paper-based system. Yes, every election cycle people come around and wonder why we're still using paper, but I think it's the responsibility of us to say, "Well, actually, it's because computers are still pretty rotten." And I say that as someone who works with them a lot. I'll hand over to Professor Teague.

VANESSA TEAGUE: I did read most of the submissions or at least scan through most of the submissions to this inquiry. I actually didn't see a lot of people asking for computerised voting, except from the disability community.

The Hon. NICHOLE OVERALL: I'll just say, Professor Teague, I was at an election on the weekend and it was a constant refrain. But that's just on the ground, anecdotally, of course.

VANESSA TEAGUE: Really? You probably have your ear to the ground more than I do. Let me just say that in the circles I hang around in, there is not a lot of push for internet voting. All I can say is I've actually spent a lot of my life writing articles in *The Conversation* and op-eds in the newspaper explaining why we don't go wholesale electronic. In some ways the demonstrated vulnerabilities in specific systems are not even the point, actually. The point is this kind of fundamental idea about verification and transparency—can you watch what's going on, and can you check that the votes are being properly counted?

I do think that providing an assisted solution in a polling place for voters with disabilities would go a long way towards addressing the genuine needs of that cohort. I think that the Electoral Commission in the past has kind of set it up as iVote or nothing, and so it's not surprising that that community comes out and says, "Well, we want iVote," when, in fact, I think a solution that is perhaps less convenient but has more genuine security and privacy properties would address most of their actual needs and, to some extent, obviate the apparent demand for internet voting.

The CHAIR: Ms Faehrmann, do you have a question? You'll need to turn the sound on. Ms Faehrmann?

Mr STEPHEN BALI: An example of technology.

The CHAIR: Technology gone mad.

VANESSA TEAGUE: I can read the chat. If she'd like to type into the chat, that's fine.

The CHAIR: While Ms Faehrmann sorts that out, maybe if I could just ask one question. In terms of what this inquiry's about, it's increasing voter engagement, participation and confidence. I think the Hon. Robert Borsak and I have been here—as has Professor Teague, I suspect—for decades now talking about this.

The Hon. ROBERT BORSAK: Far too long, yes.

The CHAIR: We always come back to the same issue, and that is that if you press the button, quite literally, you may end up with a system that doesn't work. You can't re-count it. You may be forced to hold another election, which is the nightmare scenario. I look at the NSW Electoral Commission's November 2023 report. Instead of us being at this Committee talking about potential solutions, maybe we should be recommending the circumstances in which the Electoral Commission could recommend that we look at proceeding down the road with some form of electronic voting, in the sense of "Here are the gates that you need to pass through, and it's only when you've successfully passed through those gates that this matter's actually considered, and only then could we say that there'd be some degree of confidence in relation to this, this and this."

We always sit here and think up, "Well, what could we do?", going right back to the days of iVote and then moving through everything else. So instead of us trying to recommend something that would lead to electronic voting, we could make a recommendation that we need to meet these key gates before we actually make any sort of recommendation in relation to voter confidence. I haven't discussed this with any of my colleagues yet but, just again listening to this debate that we're having, I was wondering about your comments and your experience, particularly in other jurisdictions who've considered this. Maybe Professor Teague and then we'll ask Dr Pearce for his comments.

VANESSA TEAGUE: Yes. I think the iVote enabling legislation was written very poorly from the outset. Even just that term "enabling legislation"—it quite accurately gives the impression of something that allowed this thing but really didn't constrain it in any significant way. I know I've already mentioned the Swiss example, but the Swiss regulations are very constraining: It must have these properties; it must not be possible to alter the vote except with a coalition of at least this many people; it must have open-source code et cetera. I think

I also wrote in my submission the ACT legislation actually has some quite nicely written requirement around privacy.

It basically says—I'm kind of paraphrasing—that the Electoral Commissioner may not allow an electronic voting system unless it does not allow anybody to figure out how an individual elector voted or words to that effect. It's not a technical requirement, but it's a very strong kind of privacy requirement that says if the Electoral Commissioner finds out that individual votes can be identified, he's not allowed to run the system. There's nothing like that in New South Wales, and I think there should be. Again, it really doesn't matter whether it's internet voting you're envisaging or electronically assisted voting in a kiosk. It is entirely appropriate for the Legislature to set requirements that any system should meet, and I would say privacy and verifiability and transparency are completely appropriate hurdles to put in place.

HAMMOND PEARCE: I think Professor Teague hit the nail on the head. I can't think of any requirements beyond those ones. It's the ability to know what the system is doing, to try and have some level of scrutiny, so the open source is appropriate. I would still argue there needs to be some consideration of the machines, but that's probably a separate discussion, depending on if you're doing kiosk voting or online voting. Online voting to where is always going to be my question. There is a computer somewhere in the world that you're talking to. Is it in Australia? Is it outside Australia? Are you using servers in America like most of us do? That's something else to consider as well. There would probably need to be a fourth requirement, which I would call sovereign, to ensure that the technology is Australian at every level in addition to the ones that Professor Teague said.

The CHAIR: Just to finish up on this point, would you recommend that one of the things that the Committee may want to consider, in terms of its recommendations, is that, with the Electoral Commission, the Government develop a system of restrictions that need to be met prior to any introduction of whatever type of electronic voting, however we want to call it?

VANESSA TEAGUE: Yes.

HAMMOND PEARCE: Yes.

Mr STEPHEN BALI: One really quick one. Is there an example of a computer-operated voting system somewhere in the world that is close to the mark?

HAMMOND PEARCE: Not one that I'm familiar with.

VANESSA TEAGUE: It's not uncommon in the US to have ballot-marking devices for voters with disabilities. I wouldn't want to necessarily pick a specific one that was all things to all people, but it's a normal thing across a lot of the States to have that option available for people who need it.

The CHAIR: We won't talk about hanging chads.

VANESSA TEAGUE: People say nasty things about American voting, and many of them are deserved, but actually the United States is very diverse, and it actually ranges from places with pretty terrible practices to very good practices in some cases. There are some systems where this idea of a computerised system with a printout for voters with disabilities that allows them to look at the printout and then kind of confirm it and then have it put into a ballot box is widespread.

The CHAIR: Just following up Mr Bali's point, could you take on notice that last point that you raised? Where is a good location, particular in the US, where that system is working, particularly in relation for people with particular disabilities?

VANESSA TEAGUE: I certainly can. Just a little caveat that what works in America may not necessarily work exactly here because their voting is actually quite different. I will go and do the research if you want, but it may actually be less useful than you think because it may be meeting a set of requirements that are not quite the same. The giant—fitting it all on the screen is going to be the big challenge in New South Wales, whereas that's much less of an issue in the United States where they're not even doing STV, for example.

The CHAIR: With that caveat—and I ask both of you because it's an important point—if there is a system somewhere that meets those gatekeeper issues, then let us know.

VANESSA TEAGUE: Yes, I'd be happy to go and have a look.

Mr NATHAN HAGARTY: Just a closing comment. We're sort of jumping to computers and technology, but if you go back to first principles it's what makes voting easier for people, and it doesn't necessarily have to be technology. That's a comment.

Mr STEPHEN BALI: I suppose a final question, and you can take it on notice. If we allow it on a small scale for people with disabilities, that's opening up a door to electronic voting. Foreign players or bad actors—what stops them from manipulating that on a larger scale and creating that people are voting when they didn't vote?

HAMMOND PEARCE: That's a very good point. The technology assisted voting on some level—let's assume you've got 1 per cent of the electorate that qualify for using it. Yes, you have all the same concerns that we've said about if you were doing it with 100 per cent of the electorate, but now they've minimised it. Now fraud becomes, instead of a percentage of the whole vote, a percentage of perhaps a small percentage. Even if you had a very large amount of fraud in that small percentage, hopefully the wider election would maybe turn it into a rounding error of some kind. Some of the technology assisted voting things, like phone voting particularly, does not scale very well for an attacker because there's only a small number of people that actually can record the votes on there. You can't change millions of votes if they have to go through a phone person that you're calling on the other end. But it is a problem: Any time you have technology assisted voting, we come back to how trustworthy is your system and, as Professor Teague said earlier, what margin of fraud is acceptable to you.

The CHAIR: I guess in a system where we can have conversations online with John Curtin, possibly these are issues we need to obviously take incredibly seriously. Thank you very much for appearing before us today. You'll be provided with a copy of the transcript of your evidence for corrections. Committee staff will also email any questions taken on notice today and any supplementary questions from the Committee. Thank you as always for your expertise and for your contribution to this ongoing issue. Thank you very much for appearing today. The Committee will now take a short break and return at 3.00 p.m. for the Acting Privacy Commissioner.

(The witnesses withdrew.)

(Short adjournment)

Ms SONIA MINUTILLO, Acting Privacy Commissioner, Information and Privacy Commission NSW, before the Committee via videoconference, affirmed and examined

The CHAIR: Thank you for appearing before the Committee today to give evidence. Please note the Committee staff will be taking photos and videos during the hearing. The photos and videos may be used for social media and public engagement purposes on the Legislative Assembly's social media pages and websites. Please inform the Committee staff if you object to having photos and videos taken. Before we start, do you have any questions about the hearing process?

SONIA MINUTILLO: No, I don't.

The CHAIR: Would you like to make a short opening statement before we begin questions?

SONIA MINUTILLO: Chair and members, thank you for this opportunity to appear today to assist the Committee with its inquiry into proposals to increase voter engagement, participation and confidence. As Acting Privacy Commissioner, I'm responsible for overseeing the two pieces of legislation that are established in New South Wales that regulate privacy here: the Privacy and Personal Information Protection Act and the Health Records and Information Privacy Act, which applies to public sector agencies, including the State Government sector and also local councils, among some other entities. Together, these two pieces of legislation establish the rights of individuals in relation to their personal and health information held by public sector agencies, but also the Information Protection Principles and the Health Privacy Principles that agencies need to comply with when dealing with personal or health information.

From a privacy perspective, the IPC submission highlighted some factors as may be relevant to the matters under consideration by this inquiry. Those matters, which were canvassed in our submission, are confined to some aspects of the terms of reference, but not all. They're broadly concerned with confidence in the privacy of voter information in the electoral processes that arise through the disclosure of voter information as authorised under the Electoral Act, reducing barriers to participation for voters with disabilities, and the need to ensure that any assessment included or required for accommodations to reduce those barriers are of themselves not privacy invasive and do not have an adverse privacy impact, and also to adopting a privacy-by-design and a technology and privacy impact assessment in the consideration and implementation of any new technology-assisted voting options.

We know that today there's heightened awareness and general concern about and for privacy among citizens. Public sentiment towards privacy has changed and continues to change and evolve. Embedding privacy into practices and processes can be, and is, a positive input and enabler to increase voter engagement, participation and confidence, and for building trust and confidence among our citizens in our processes and our institutions. Adopting privacy-positive practices in the designs of systems and solutions from inception to implementation is one such way. Privacy should be at the forefront of the thinking, rather than as an afterthought. Thank you, and I'm happy to take any questions.

The CHAIR: We have just heard about information technology and technology-assisted voting and some of the issues associated with that. Could you please elaborate on the benefits of taking a privacy-by-design approach in implementing a new technology-assisted voting system in New South Wales?

SONIA MINUTILLO: Certainly. Taking a privacy-by-design approach allows you to both be customer centric in terms of the design, but actually looking at what are the information flows that are involved, what are the types of information? It allows you to map those information flows. It allows you to identify potential risks that might be not known or obvious when embarking upon the process. It also allows you to develop resolution responses and address or mitigate those risks before you simply implement and embark. A privacy impact assessment or a security assessment allows you to take those things into consideration as you go into the process, rather than at the end, after you've already developed the process.

The CHAIR: It's of interest to me that the discussions when we talk about technology-assisted voting invariably begin with how we ensure that the voters' purpose is accurately recorded. The issue of privacy seems to almost take second place in that, and privacy by design seems to be something that we need to, as you say, particularly ensure is built into that whole system from the beginning. What strategies can be implemented to ensure that the process for requesting accommodations for voters with disabilities does not require disclosing sensitive medical information, for example, that may discourage their participation?

SONIA MINUTILLO: The collection of medical information is, by its nature, often very sensitive information, both in terms of its content and its type. In having a set of circumstances in which a potential person

who may wish to rely on the disability/accessibility requirements that requires them to produce that information, the Electoral Commission would have to ensure that they've got additional mechanisms to preserve the protection and the security of that information and the safeguard of that information, not just simply in terms of where it sits in its systems but who has access to that information, how long they retain that information.

I would encourage an approach that includes engagement with those who are immediately affected by these arrangements as part of that process, including the privacy commission more generally, thinking about whether you have a mechanism where that person only needs to declare that requirement once, and not have to declare it every occasion that there is an election, so that there is that continuity. It's thinking about not just how you enable it but how you don't continue to disenfranchise by requiring the repeat requirement to reproduce that information or to have to validate it. Simply, perhaps, having a recognition of that into the system on the electoral roll could be one way.

The Hon. NICHOLE OVERALL: Ms Minutillo, with technology-assisted voting, privacy risks, concerns around that, do you have concerns that they're greater?

SONIA MINUTILLO: I think there are concerns with any technology-based system. I think it's necessary to ensure that you have developed those systems with clear thought about the security arrangements that are in place. Some of the issues around things like encryption, access, cybersecurity need to be developed. I think it's difficult from my perspective, because there are also risks in the existing system that arise from human error, and I would not want to be suggesting that one is less favourable or more favourable. The decision about technology-assisted voting is obviously a policy question for government in the long run as to what is appropriate for the exercise of elections.

The Hon. NICHOLE OVERALL: So your greater concern would be, as you had mentioned in your opening address, privacy being at the forefront, rather than an afterthought, with whatever system is developed or modernised or enhanced?

SONIA MINUTILLO: Most certainly. It should be baked into the process, embedded. It should not be at the end of the process, once you've designed it, and then you realise that there are these considerations that, had you factored it in at the beginning, you might have been able to mitigate some of those issues.

The Hon. NICHOLE OVERALL: You also mentioned that there are heightened concerns when it comes to privacy, in the context that we're talking about today. From the privacy commission's perspective, what about public education to address those concerns?

SONIA MINUTILLO: I think education, awareness and understanding is really important for all citizens, not just in the context of the conduct of elections but generally. It enables people to actually understand what their rights are, how their rights should be applied and how to preserve those rights in the context of whatever engagement they have with government. Understanding that will enable people to actually have confidence and trust in how government is engaging with their personal information or using it or preserving it and protecting it. I encourage increased education and awareness at every opportunity, and giving thought to that about ensuring that it reaches all communities as well as part of that education.

The Hon. NICHOLE OVERALL: Bearing in mind the position that you may be in and it might be a little bit more difficult for you to answer, but clearly the coverage on that and the reach of information, public education around those concerns could probably be more pronounced.

SONIA MINUTILLO: I think that's something that's a bit difficult for me to answer, but I would certainly go back to my earlier comment and say any education is good education and makes a positive impact.

The Hon. NICHOLE OVERALL: And you can never have too much of it. Is that what you're going to say next?

SONIA MINUTILLO: Never have too much.

The CHAIR: Can I ask you, just following on from Ms Overall's questions, if you could talk about maybe what other jurisdictions, if any, in your view, have a good system up and running with those safeguards that you mentioned.

SONIA MINUTILLO: I couldn't speak to verifying other systems in other jurisdictions, Chair. I think that what I could say is that I know that in other jurisdictions, for example, in relation to disclosure of information more generally under the authorised provisions—in Victoria, for example, they have a requirement as part of those provisions to consult with the Privacy Commissioner as part of that public interest discussion. But in terms of specifics in each of those jurisdictions, I would not be best placed to comment.

The CHAIR: Do we have a system, a mechanism or requirement similar to what you just suggested that exists in Victoria?

SONIA MINUTILLO: There is no equivalent provision for the requirement that exists in Victoria under the existing section 50 here in the New South Wales Electoral Act. The provision in Victoria is under section 34, I believe, and there is not an equivalent here for the comparable section 50 provision.

The CHAIR: Can you tell us how that works?

SONIA MINUTILLO: As I understand, how it works is that when there's a request—section 50 of the Electoral Act seeks to request to the Electoral Commission for access to the information on the roll that is for a public interest benefit, so that's distinguishable from the provisions under section 49 that deals with parties and candidates and the like. Under that provision, the Electoral Commission is to decide whether or not there is a public interest in releasing that information to the persons or those who request it. As part of that, I understand that the Electoral Commission does require certain undertakings about security of that information and its use. In Victoria, though, as I understand, the difference is that, as part of coming to the decision as to where the public interest lies, there is consultation with the equivalent of my office in Victoria informing that decision, whereas here in New South Wales, it is a decision of the Electoral Commission. There is no requirement, per se, for that consultation to occur.

The CHAIR: It's a policy question, but do you believe that public confidence in the electoral system would be improved if such a requirement was built into our system as well?

SONIA MINUTILLO: I think it is a question of policy, but perhaps I could answer it by saying I don't think it would undermine it.

The CHAIR: Well said.

The Hon. NICHOLE OVERALL: Very political.

The CHAIR: Any other questions?

The Hon. NICHOLE OVERALL: I could have another one there, Chair, then. Privacy risks, then—and obviously there is the need to disclose some voters' personal information in various ways. We've got a changing technological landscape that is eventually going to impact the way we vote one way or another. How do you, in your role, see the privacy risks being mitigated or can they be better addressed than what we have done to this point? Obviously around that legislation, the legislative changes that may be implemented—is that what you see the pathway forward at this point?

SONIA MINUTILLO: I see that that is part of the pathway forward in assisting that. I am aware of other evidence that's talked at earlier days of the inquiry that considered the issues of declaration of addresses and the like as part of the electoral processes, and I think that that is also an opportunity for engagement with how that's best achieved in terms of the policy position that the Electoral Commission is trying to achieve by having that information and then that transparency, but what other options may also be supported and could be considered as part of that, in terms of the candidates.

The Hon. NICHOLE OVERALL: Not talking about penalties as such, but the ramifications of privacy breaches—are they broadly known, do they need to be more broadly known, and do they also need to be updated?

SONIA MINUTILLO: Are you referring specifically, if I could clarify, in terms of New South Wales privacy legislation or the Electoral Act?

The Hon. NICHOLE OVERALL: Yes. Sorry, it's New South Wales at this point, yes.

SONIA MINUTILLO: In New South Wales, the New South Wales Privacy Act was amended with the new data breach scheme coming into effect in November of 2023. That is a mandatory notification of data breach scheme that requires all agencies that are within the New South Wales privacy laws to comply with, which involves a notification should they meet a certain threshold to me as well as certain other obligations on them with respect to their compliance more generally, but also to notifications to citizens. I would make the comment that we've done a lot of work to promote and elevate understanding of the data breach scheme and the obligations.

I think, regrettably, certain significant data breaches more generally, not necessarily within my legislative remit, have certainly made citizen awareness about data breaches—it's received more attention than perhaps one could otherwise have thought possible. I think the important part of that is building the capability and the reporting, ensuring that where there is an incident, even if it's not reportable to me for the purposes of how it might not meet the threshold under the scheme, that doesn't mean that agencies don't take that near-miss, if I could describe it in those terms, and look at the opportunities to improve their privacy practices, their policies and adjustments. I think

the scheme is working. Notifications are being made. We continue to look for opportunities to support both the agencies, but also citizens in their awareness of the scheme and what it means for them.

The Hon. NICHOLE OVERALL: You're quite right—in some of the larger cases that we've all seen and are very aware of. But are you also finding in a rapidly evolving technological landscape, particularly with AI, that, from a privacy perspective, you're seeing and tapping into what you'd mentioned about heightened concerns—that there is a growing prevalence of situations that are occurring which also erode that trust engagement and confidence?

SONIA MINUTILLO: I would say that we do see incidences, such as cyber incidences, that are contributing to that erosion of trust. But, equally, certainly in terms of the data breaches that are reported to me in my office, human error has been one the most significant contributing factors that sits behind the reason for those data breaches having occurred, which means that while we continue to ensure we have focus on the cyber incidents and issues of ransomware and denial of service and those types of issues, we can't lose sight of our first line of defence, which is our people.

The Hon. NICHOLE OVERALL: You're suggesting that we need to continue to work with and on our people to ensure that the human error side of privacy risk is being addressed along with the technological advancements as well.

SONIA MINUTILLO: That's correct. They should travel together, not one instead of the other.

The CHAIR: In relation particularly to one of our terms of reference, which is voter participation, and particularly for people with disabilities or those who've historically been under-represented communities, how do privacy issues act as a barrier to participation and how do you think that they could be reduced? I'm thinking there, for instance, we've had some issues in relation to Indigenous communities, but there'd also be a range, I imagine, of differing multicultural communities from differing cultural backgrounds and political backgrounds from various places in the world, where concerns about privacy and access to information might be, for historical reasons, really a concern restricting their interest in participating. Am I correct in that and, if so, what should we be looking at recommending to try to reduce those barriers?

SONIA MINUTILLO: I think it's important to think about privacy in that context—in how you enable the participation to occur and not create further barriers that will disenfranchise. Potentially, requiring an individual to meet a higher threshold in order to exercise their vote because of a particular need, I think, would have a disenfranchising effect and wouldn't actually achieve the desire that you're looking to achieve, and it would undermine trust. I think it's about working with those communities in particular to also understand and to build those solutions with them as part of that but it doesn't start from a one size fits all without having regard to the diversity of issues and needs that might need to be part of the solution.

The CHAIR: One of the things governments of all political persuasions in New South Wales—the former Government and the current Government have said that they don't support the use of photo IDs for voting, and it's been described by the Electoral Commissioner as a solution in search of a problem. I was wondering if you could comment on whether that is an example of something which, if it was required, may in fact restrict voter participation?

SONIA MINUTILLO: I think the use of photo ID would depend, in some respects, on how that is meant to be used and how it would be used and what is actually the problem that is being sought to be solved and whether the use of the photo ID will actually address the problem, in effect. It's not clear to me how the production of photo ID would actually address the problem, specifically. Certainly, there may be those in the community who, for various reasons, do not have the type of identity documents that would enable them to participate. It's not clear to me how that issue would actually address the problem for all of the community.

The CHAIR: Any other questions?

The Hon. NICHOLE OVERALL: No, you took my last one from me as well, Chair, so I had the same question that you just did. Thank you.

The CHAIR: I think you've answered all our questions. Your submission was excellent, and that answered most of our questions. I can simply say thank you very much for taking the trouble and the time to appear before us today. You'll be provided with a copy of the transcript of your evidence for any corrections that you may have, and Committee staff will also email any questions taken on notice from today and any supplementary questions from the Committee.

(The witness withdrew.)

The Committee adjourned at 15:25.