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# Proof Committee Hansard

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

**Electoral and Referendum Amendment (Protecting Elector Participation) Bill  
2012**

(Public)

WEDNESDAY, 29 FEBRUARY 2012

CANBERRA

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**JOINT STANDING COMMITTEE ON ELECTORAL MATTERS**

**Wednesday, 29 February 2012**

**Members in attendance:** Senators Polley, Rhiannon, Ryan and Mrs Bronwyn Bishop, Mr Griffin, Mr Melham, Ms Rishworth and Mr Somlyay

**Terms of reference for the inquiry:**

To inquire into and report on:

Electoral and Referendum Amendment (Protecting Elector Participation) Bill 2012

**WITNESSES**

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**GATELY, Mr Andrew, Assistant Commissioner, Roll Management, Australian Electoral Commission ..... 1**  
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**PIRANI, Mr Paul, Chief Legal Officer, Australian Electoral Commission**

**ROGERS, Mr Thomas Joseph, Deputy Commissioner, Australian Electoral Commission**

**Committee met at 09:34**

**CHAIR (Mr Melham):** I declare open this public hearing of the Joint Standing Committee on Electoral Matters inquiry into the Electoral and Referendum Amendment (Protecting Elector Participation) Bill 2012. In its review of the conduct of the 2010 federal election, recommendation 1 of the committee's report supported amending the Electoral Act to allow the Australian Electoral Commission to directly enrol eligible electors. Recommendation 24 sought to make provision for declaration of votes to be counted in certain circumstances when an eligible elector had been removed from the electoral roll by the objection process.

The explanatory memorandum indicated that the bill implements these two recommendations. The amendments in this bill will enable the AEC to directly enrol eligible electors based on information from third party sources and make changes to how declaration votes will be considered. Today the committee will consider key issues in relation to the bill. I remind witnesses that although the committee does not require you to give evidence under oath, this hearing is a legal proceeding of parliament and warrants the same respect as proceedings of the House.

The evidence given today will be recorded by Hansard and will attract parliamentary privilege. I remind members of the media who may be present at this hearing of the need to fairly and accurately record the proceedings of the committee. I now welcome representatives from the Australian Electoral Commission, the Australian Privacy Foundation and the Democratic order of Australia to today's roundtable discussion. The committee has received submissions from each of you for today's roundtable.

I will give each group an opportunity to make some brief opening remarks. I would appreciate it if you could summarise your remarks in about five minutes. I will then propose an opportunity for members to ask questions but there is also an opportunity, if we can do it in an orderly fashion, for witnesses to comment on other witnesses and interact with them in a professional way.

**Mr Killesteyn:** Perhaps I will make a short opening statement, given that many of the issues that are relevant to the protecting elector participation bill are similar to those that the committee is already considering in the maintaining elector address bill. The state of the electoral roll is well known. If an election were held today, 1.5 million eligible Australian citizens would be unable to exercise their franchise. This continues to be of concern to the AEC as it is to other stakeholders. The ANAO, in its audit report on the conduct of the 2010 election said, 'The most significant long-term issue facing the AEC remains the state of the electoral roll.'

The reasons for eligible Australians not enrolling are many and varied. Administrative electoral practice between elections, to encourage electors to enrol, has been an ongoing endeavour of electoral management bodies over the last 100 years. We know that these mechanisms have evolved and changed over time, driven by technology, demographics and electors' expectations about how to do business with government agencies, and have been encouraged by joint standing committees on electoral matters to close the gap between those who are eligible and those not enrolled.

We also know that mechanisms for roll stimulation, such as the continuous roll update program and fieldwork, are increasingly costly and cost ineffective as sole mainstream strategies. More importantly, they do not lead to enduring change in elector behaviour. The apparent success of the roll stimulation program in 2007 has all but dissipated since that time. Measures to provide the AEC with authority to directly update and enrol electors' details and new electors, respectively, will assist in arresting that decline.

This is the evidence that has emerged from initiatives in New South Wales and Victoria. The AEC is of the view that direct enrolment and update processes is a sensible next step in Australian electoral practice. Direct enrolment and update measures based on proven data matching exercises can provide the same level of assurance as current processing regimes about the three key requirements for enrolment—that is, that the person is who they

say they are, that the person is eligible for enrolment, and that the person resides at a particular address. Our submission deals with the processes that would be employed to give this assurance.

The direct enrolment process will not replace existing programs, rather it will become another important part of a blended and ultimately more effected program of activities aimed at improving a number of people on the roll who are entitled to be on the roll.

As I said in my previous opening statement, direct enrolment would be complemented by existing CRU activity, targeted field work, education programs and local initiatives pursued by staff in state and divisional offices. Our 2012 year of enrolment activities commemorating 100 years since the passage of legislation to enfranchise all Australians illustrates the nature of a blended program. However, without direct enrolment at the federal level the AEC is concerned that the level of divergence between the state and federal electoral rolls is likely to grow and itself will become a source of disenfranchisement.

Finally, it is worth noting that the introduction of this bill follows substantive consideration and public consultation. For example, direct enrolment processes have been considered by the Joint Standing Committee on Electoral Matters as part of its inquiry and report into the 2007 federal election; as part of its inquiry and report into the NSW direct enrolment legislation in late 2009 and early 2010; and as part of its inquiry and report into the 2010 federal election.

Public views on direct enrolment were also specifically sought in public consultation in respect of the government's second electoral reform green paper released in September 2009. I am advised that some 18 submissions specifically addressed that issue with 15 expressing support including those from the Democratic Audit of Australia, the Accountability Round Table, the electoral commissioner of Queensland, the United Nations Youth Association, Blind Citizens Australia, Deaf Australia and, of course, the Australia Electoral Commission. I also understand that at the Joint Standing Committee on Electoral Matters round table public hearing on the second electoral reform green paper in November 2009 there was discussion of the possible changes to enrolment processes such as automatic or direct enrolment and update.

**Dr Clarke:** Firstly, I should draw to attention that the rushed submission that we got to you on Friday was signed by myself as chair, not on behalf of the board. Overnight I have sent you a letter which confirms that.

**CHAIR:** That supplementary letter is now in evidence; we can proceed.

**Dr Clarke:** Thank you, so it is now evidence by the board subject to those two small changes. There is a series of points which I will reduce to quick notes. Firstly, with regards the procedural aspects, there are many aspects of this which have not conformed to what we would have thought was an appropriate process. We are not aware of any risk assessment having been performed. We were not aware of any privacy impact assessment having been performed. We were not aware of consultation processed which the Electoral Commissioner has just referred to. We are not aware of the APF or any of the civil liberties organisations being involved in any of those. We have checked back through our records and confined our evidence of that in our own records.

Once again we have been confronted with a bill without a consolidation of the bill into existing laws, which would make it far easier to analyse, especially under time pressures. We have not been able to find any research relating to the initiative in the short time we have had available to us. We would have anticipated that such a document would have been available and pointed to as part of the materials of these hearings.

The time available has, as we have pointed out, been far from adequate for a pro bono organisation to deal with. We have multiple steps, which I have laid out in the submission, that need to be taken in order to provide quality evidence to you, which is what we are in the business of doing. We know that there has been a submission by the Australia Electoral Commission, but at 8.30 this morning, it still was not up on the site so we have not had the opportunity to see what that submission says.

Finally, the outcome of the inquiry does appear to be predetermined. The inquiries being held by the same committee came forward with a related proposal, and when we sought further time to address this matter we were told that, 'The committee was merely focusing on the adequacy of the bill in achieving its policy objectives.' This sounds rather less than substantive consideration of the matter. So we do not believe that the procedural aspects of this have been at all appropriate.

We note the JSCem's proposal, as it was originally put forward—at least I believe it was originally, in 2010; it may have been a predecessor proposal—and that recommendation No. 1 had a number of features. We then look at the bill and we look at the second reading speech which, as we point out, contains rather a lot of newspeak and glosses over things and misrepresents the ICCPR, all in the space of a couple of paragraphs.

Regarding the proposal itself, section 103B appears to be that which we needed to concentrate on and that is what we have focused on. It is expressed in a way that is anything but transparent and we have found it necessary

to deconstruct it and put it back together again in order to try to understand what the proposition actually was. We have that reconstruction on crossing the boundaries on pages 3 and 4 of our submission. We have based our subsequent comments on that interpretation, which we hope is the correct one.

In section 5, on page 4, we point out that this committee's proposal had a number of features to it and we identified six aspects of that proposal, in recommendation No. 1, which represented safeguards relating to the processes in this proposal. In each case, without going through them in boring detail, they are omitted from or do not appear to be in the bill as put before this committee. Several of those we think were particularly significant in their importance—(a), (b), (d) and (f) in section 5— and the omission of those six controls is seriously harmful to data quality and seriously harmful to individuals. So we submit that the bill before you is not that which you asked for.

We drew to attention in the previous hearing, and in the previous submission on the other bill, a set of contextual factors, which we spent a little bit of time on a couple of weeks ago and which I do not propose to do anything other than mention again. Those contextual factors are all matters of concern and they all set a framework in which we believe this additional imposition is more serious, as it is judged on its own merits. It adds to a series of difficulties relating to trustworthiness to the electoral roll, relating to demand powers. It adds to that existing set-up.

As to the proposal itself and the privacy perspective on the proposal, on page 5 in section 7, we identify a series of issues which we believe are of considerable significance all by themselves, without the compounding effect of the context. It is an imposition on individual self-determination as distinct from the previous steps that have been taken by the parliament to empower the Electoral Commissioner to take advantage of data that has been expropriated from other sources in order to draw to attention to a person that there could be a reason for them to change their address. It is moving beyond that to a position where a public servant has the power to determine on behalf of the person. We believe that is a significant change in a democratically-governed nation.

**CHAIR:** It is the case now, is it not, where they remove people, under the Electoral Act, determined on behalf of the person without reference to the person and they can lose their right to vote, which they currently have?

**Dr Clarke:** Possibly so, Chair. I have not had a chance to investigate that aspect. Clearly, we would investigate it if we had the opportunity to do so, before we formed a view, but it would not be something we would be enthused about. The second point of the six that are made on that page is that in a considerable number of cases the address that the commissioner requires will not be an appropriate address at which to enrol the person in question. Further, in point 3, the notice that the commissioner sends is sent to an address that in a proportion of cases is inappropriate in a sense that it will not reach the person. So the person will be denied the opportunity to correct the error and the error is therefore very likely to proceed onto the roll.

Further, as we read the provisions of section 103B, negating information that says, 'No, that is not an appropriate address for that person' is negating information that has to be provided by the person themselves, as distinct from a flatmate, for example, who says, 'No, he's moved out, mate.' That would appear not to be authorised, but again we are trying to read a bill in isolation without consolidation in a hurry. And five, the presumption seems to be made on the evidence—

**CHAIR:** Doctor, this submission in front of us—we have got it, it is part of the evidence, it is now on the website. The opening gambit is not about rereading the submission, I just want maximum time so we can ask questions. Are there are some other points you want to make or highlight?

**Dr Clarke:** The conclusion that we reached was that the recommendation was seriously flawed in the first place, but the bill fails to implement important aspects of that recommendation because it omits controls that the majority of the committee had specified. It also contains further features that are seriously harmful: both we would submit to data quality but also to electors' privacy.

**Prof. Costar:** I will be as brief as our one page submission was. As the commissioner rightly pointed out, we are close to the 100th anniversary of the passage of the Electoral Amendment Act 1911 which gave us what is commonly known as compulsory enrolment—one of the great democratic impulses of the Commonwealth.

If my colleague Dr Brent—who has written extensively on this matter—were here, he would remind me and the committee that over that century, electoral officials have used what tools have been available to them to build the roll. We started off with policemen on horseback. We moved through to what were called habitation reviews. As I pointed out in an earlier submission, habitation reviews became a blunt instrument as work practices changed—people not being home, locked apartments, locked buildings, savage dogs. We moved to what is known as CRU—Continuous Roll Update.

We are now in the position, as the commissioner pointed out, where we have a mismatch. As I said, if Dr Brent were here he would say, 'Under the current legislation, the Australian Electoral Commission is very good at taking people off the roll; it is not very good at putting them back on.' That is not their fault, that is a problem of the legislation, which I believe, what I will call the address bill and the participation bill, the current bill that you are considering, sets out to address.

As I have said to this committee on a number of occasions, we face a technical problem: there is a technical mismatch in the data collection and the data usage. It needs to be fixed. We have got to stop shilly-shallying around about it.

This matter has been on the public agenda for many years. I am a bit surprised that the Privacy Foundation seems to have missed out on this debate. I have been before this committee for years arguing this. The Democratic Audit going back to 2001 has been on about this. It is a matter that has been picked up by other commissions, as we know New South Wales, Victoria, and Queensland, I understand, is moving in that direction. To be blunt Mr Chairman, it is a no-brainer.

**CHAIR:** Because it is a round table, I want to advise my colleagues and the submitters that the procedure I intend to adopt so that we can have this thing flowing and not one person or one group dominate is: people get five-minute lots of questions. Then I will move to someone else. That does not restrict them to five; if others do not want five, I will come back and we will share them around.

**Mrs BRONWYN BISHOP:** I want to begin by saying I was disappointed again: in the commissioner's opening statement, he said—you have not provided us with a copy, but I wrote it down—'1.5 million people may not vote today.' That is not true; they can enrol today, if they wish, and vote.

This again, when I listen to the evidence, I am perpetually disappointed at the Electoral Commission that there is no evidence given to back up the assertions that you make. You have given us no statistical numbers about who these people are. I asked for details about the people who are enrolled in New South Wales, and surprise, surprise, you could not let me have them before this hearing date. I can have them afterwards. You might have to come back. It seems from the information that Mr Antony Green is able to get—he must have got it from somewhere, and if he can get access to information, I am sure we can too. I go back to my principal point about this automatic enrolment corrupting the integrity of the roll. This time I am going to go to a good source which even you will have to acknowledge, Mr Graeme Orr's *The Law of Politics*. I note that the professor over there was almost quoting one of his chapters verbatim on the history of the construction of the roll. I think this is an important point to make, and I would like to hear some response to it from all three groups, particularly from you, Dr Clarke. I do appreciate your coming at short notice.

I refer to page 71 of the book, where Mr Orr writes: 'Like other official public registers, such as land registers, a chief feature of electoral rolls is their finality. The purpose of a roll is to be a definitive statement of the entitlement to vote'—leaving aside the provisional provisions—'Thus there is a rule that the roll is conclusive evidence of the entitlement to vote. Reinforcing this is the secondary rule in almost all jurisdictions that a court of disputed returns is not to inquire into the correctness of the roll. In Perkins and Cusack the Federal Court of Disputed Returns faced a petition claiming that many people were on the roll for the seat of Eden-Monaro whose real place of living was outside the electorate. Even though it was alleged that some enrolled electors lived at addresses that lay outside of the divisional boundaries, Stark, J refused to allow any evidence to be tendered that might contradict the face of the roll. The only exception he appeared to be willing to broach was if the electors, in answer to the standard question at the polling booth, had revealed they were not entitled to vote and then it is the question of the judgement of the returning officer, not the roll itself.'

Right through this particular chapter of the book it reinforces that the concept of the roll is part and parcel of the entitlement to vote. It continues: 'A three judge bench of the High Court sitting in the Court of Disputed Returns rejected the claim on jurisdictional grounds, citing the prohibition of going behind the roll. Stephen J noted that this did not mean that errors on the roll were completely unreviewable. Rather, the prohibition assumes errors on the roll ought to be put in order before an election rather than risking dislocation of the democratic process through illegal challenges to the roll, the campaign and after the election. In other words, the judicial findings that we have access to make it quite clear that accuracy of the roll is absolutely prima facie; it is the essence of the integrity of the roll. If we have a roll which is fraught with the likelihood of errors then we are impinging that integrity.'

By simply taking, as you do—and the point that Dr Clarke makes—that you as a public servant are entitled to make any decision you wish about which rolls you will use and that you have the authority to change that roll with no proper connection to the elector is outrageous. The letter that you write, you write to the new address—not to the old address. You keep writing to the new address, not the old address. You do not even attempt to check



it. Could you answer me why you do not and could you tell me what research you have done to back up your assumptions? Where is your written thesis that takes into account judicial opinion that is already on the record that you have not bothered with in any way, shape or form to communicate to this committee?

**CHAIR:** The three groups of witnesses will be allowed—uninterrupted—their answer.

**Mr Killesteyn:** Mrs Bishop's question goes to the issue of accuracy of the roll. I do not have any concerns with addressing that particular question. I think the accuracy of the roll is an important issue, Mrs Bishop, and I do agree with you in that sense. Let me just put this to the committee: the three requirements that are explicit in the Commonwealth Electoral Act go to, firstly, their identity—that is, they are who they say they are—secondly, their eligibility, which is prima facie citizenship and age, and, finally, whether they reside at the place that they say they are living at.

In the direct enrolment model that we are talking about, the data is provided by the sources that we intend to rely on if this legislation is passed—that is primarily Centrelink and Roads and Traffic Authority data. Each of those agencies at the federal level and at the state level has processes in place that require an individual, prior to being registered for either a driver's licence or Centrelink, to provide documentary evidence—original documents—of their identity as well as their age and residence. Those documents include documents such as birth certificates, passports or other original documents. Those documents also provide that the person is to show their residential address—that is, their normal place of living. All of those requirements are exactly the same as the issues that a person needs to provide to the Australian Electoral Commission to be enrolled.

**Dr Clarke:** I am quite comfortable with the statements that were made by Mrs Bishop.

**Prof. Costar:** Most of them, I think, were addressed to the commissioner. I am very pleased Mrs Bishop is impressed by Professor Orr, who is a colleague and friend of mine, but I was not paraphrasing him; I was paraphrasing Dr Brent.

On the error factor, I noticed it earlier at hearings of this committee in related matters. One of the arguments put against direct enrolment—and let us stop using the term automatic enrolment, shall we? I think the commission has killed that off good and proper before this committee. There is nothing automatic about it at all.

**Mrs BRONWYN BISHOP:** Yes, there is.

**Prof. Costar:** It is direct enrolment. An argument was put that it was uncharted territory and the Commonwealth should not go there because it had not been there before. That always struck me as a weird argument. We did not have compulsory enrolment in 1910 either. That did not stop the Commonwealth going forward. I always think the Commonwealth should lead on electoral matters, not follow, but there we are. But we do have two working examples now, functioning in two elections: New South Wales and Victoria's last two elections were operated in an environment in which there was a version—they varied it a bit—of what I will call direct enrolment. I went and looked at the data produced by the New South Wales Electoral Commission. I was looking for errors—that is, letters wrongly sent. One reason, I would think, why you would not send letters to dead addresses is that postage is getting too expensive. Why would the commission waste its money doing that? I looked at the error factor in New South Wales. These are what they call 'people incorrectly contacted'—that is, they sent it to the wrong place. The error factor was 0.05 per cent. That is statistically random—anything could have that error factor. We could count the number of people in this room three times and come up with a higher error factor than that. The system works. It is a technical change. Let us lay off the ideology and get on to enrolling the people.

**Senator RHIANNON:** Thanks, everybody, for coming to the roundtable. I will start by asking if Professor Costar could come in on this first. You spoke about changes in Victoria and New South Wales and other jurisdictions with regard to updating the roll. I suppose this is going into the realm of politics, but I would ask if you could share with us your views on why the states are ahead of the Commonwealth on this issue. I would then ask a question first to Dr Clarke. What we are dealing with here is privacy concerns, which the majority of people understand and are committed to, but also the democratic process, so we maximise the number of people on the rolls. Within the group of people you work with, how do you see that we can balance these concerns up? Is there consideration given to that? But I am obviously interested in everybody's views on these issues.

**Prof. Costar:** I do not want to speak for the state electoral commissioner—that would not be my position—or for their relevant ministers. But from what I hear—I am a regular at the Victorian electoral matters committee—I think the states are getting frustrated. They see this as a technical problem. Like the federal commissioner, they are charged with maintaining an accurate, fraud-free roll. That is what they are about. That is the building block. Mrs Bishop is dead right about that, quoting Professor Orr. You go nowhere unless you have got a reliable roll, and the Australian audit commission has spoken about this on any number of occasions and given the

Commonwealth's roll a decent tick for that, but we know there are problems. I think they are getting frustrated that the Commonwealth is not acting. I do not encourage that. I do not like us drifting apart with having different electoral systems, within a range. Obviously, it is a federation; you are going to get different administrative and even policy arrangements. But on a big issue like the roll, given that we have had what are commonly known as the joint roll agreements, which have been going on now for some time—and we fought hard enough for that—I am very disappointed to see it drifting away. Of course, New South Wales and Victoria have drifted. Queensland was thinking about it, but of course we have got an election coming up there and we do not know what is going to happen. This is why I think it is time the Commonwealth acted.

**Senator RHIANNON:** When you say they are frustrated, I understand that it was both Labor and the coalition—

**Prof. Costar:** In New South Wales, as I think you were a member of that parliament at the time—

**Senator RHIANNON:** Yes, so they came together?

**Prof. Costar:** They came together and voted on it. In Victoria the coalition voted against it. Reading the debates, if I can pass a judgment, their heart was not in it. I would be very surprised if the coalition government in Victoria repealed the legislation. They have been there for 12 months. They have shown no interest in repealing it.

**Senator RHIANNON:** There was the other part of the question to Dr Clarke, and if anybody else wanted to comment.

**Dr Clarke:** I believe part of the problem is that the presumption is that there is a desire to maximise the number of people on the rolls. I do not believe that is an appropriate objective. The notion of the vote is a right—it is an entitlement—and turning it into an obligation, which is what that entails, I just do not believe is appropriate in a democratic process. The intention should be to maximise people's opportunity to enrol and to vote, and this goes well beyond that.

With regard to frustrations of electoral commissioners, this is important—yes, administrative convenience is important. I am a business consultant; I have been in the IT industry for 40 years. I am all for efficiency and effectiveness in administrative processes. But there are a lot of other frustrations and fears amongst electors who are unable to suppress information which is sensitive, particularly their address. Those are additional concerns. There are people who are going to be moving address, who are going to be seeking to not have that address publicised, and it is going to turn up on the electoral roll against their wishes and, in some cases, against their knowledge. Those are things that have to be balanced against the preference of some people to impose a responsibility to vote and a responsibility to enrol. I believe there is a lot of balancing that needs to be done, and we do not believe that this is anything like the balanced approach.

**Mr Killesteyn:** I have a couple of comments in relation to Senator Rhiannon's questions. There have been joint roll arrangements now for many years. Essentially the states and local governments have relied on the Commonwealth to prepare the electoral roll. In any one calendar year we can close the roll, so to speak, for a state election or a local government election up to 90 or 100 times. We are the primary body that acts on behalf of the Commonwealth and the states and local government to deliver an as complete as possible electoral roll for those elections. As other states start to move in isolation, this notion of a single roll starts to break down and the divergence, as I said in my opening statement, is likely to lead to people who do not understand the difference between electoral rolls being at the state level or the federal level. We already know that people show up at federal election time believing they are on the roll and they are not.

In terms of this notion of an entitlement to vote, that is a policy issue that has been well settled for a long time. The act requires people to enrol. It is both an entitlement and an obligation. If parliament wants to change that that is fine but, at the moment, the act says it is one of the few pieces of legislation—perhaps the only legislation in federal books—that has a duality to the act of being enrolled. It is an entitlement, yes, but it is also an obligation. And as an administrator responsible for implementing that legislation, I need to find ways to implement that particular part of the act. I agree with Professor Costar that this is a technical issue not a policy issue. If the policy issue is the one to be debated then let us debate that policy issue, but here we are talking about a technical mechanism that simply flows from other practices of managing the roll that has been in place for 100 years.

Let me finally address this issue of people not knowing—and again let me give you some evidence—that their address has been changed. There is evidence. Both the New South Wales Electoral Commission and the Victorian Electoral Commission have reported to their respective electoral committees about their experiences with direct enrolment and direct update. Just look at the Victorian experience. This particularly goes to this question of somebody who is directly enrolled but does not vote. There is obviously debate about what action an electoral

management body should take in that situation. The VEC reports that 238 automatically enrolled electors did not vote. Of that 238, 68 subsequently have been excused—they obviously had a reason—19 have paid their penalty, 13 had provided invalid responses at the time the report was written and a further 13 non-voter notices sent to these electors have been received by the VEC marked, 'Return to sender.' Significantly, the VEC noted that none of the 238 electors claimed that they did not know they were enrolled.

**Senator RHIANNON:** Going back to this issue of obligation, does that mean you do not support compulsory voting?

**Dr Clarke:** As we suggested in the previous submission, there are significant difficulties with the idea and increasingly significant difficulties in the modern era.

**Ms RISHWORTH:** I just want to pick up on a comment that Dr Clarke made, and there seems to be some disagreement between Professor Costar and the Electoral Commission about consultation regarding this principle. Perhaps the Electoral Commission could elaborate on the consultation they went through and respond to Dr Clarke's accusation that there was no consultation.

**Mr Killesteyn:** I can talk generally about it. The issue of automatic or direct enrolment has been a topic of some discussion for at least the last decade. It has been put before joint standing committees on electoral matters over that time in almost all of its inquiries into the conduct of federal elections. In the inquiry after the 2004 election it asked the commission for a specific submission on it. All of those submissions have obviously been public and have been made public for others to comment on. It has been raised in the context of the 2007 inquiry into the conduct of that election by the Joint Standing Committee on Electoral Matters as well as the 2010 election inquiry. I can provide details of that, on notice, if you wish.

**CHAIR:** Thank you.

**Mr Killesteyn:** As well as that, as I said, the second green paper that the government issued raised that issue and there was another process for public consultation, which resulted in a significant number of submissions supporting that notion.

We have continued our dialogue with this committee. We have also continued our dialogue with the Privacy Commissioner about the privacy issues and we are in the process of conducting the privacy impact assessment, as required, and will make that available once it is completed. We also comply with the Commonwealth's data-matching guidelines. We will make public—as we have already done in this submission, but we will certainly do it formally—the way in which we take the data from Centrelink, Australia Post and the Roads and Traffic Authority; how we deal with that in the data-matching process; and how we use that data to then find and determine whether a person ought to be enrolled or their address details updated.

**Senator RYAN:** Professor Costar, I would like to address a couple things you said. I start by saying that constant reassertion of an idea does not establish its correctness or otherwise. I accept that this has been on the agenda for a while, and I have been batting it back for a while myself, but I do not think longevity necessarily validates an idea—not does, to be blunt, dismissing what I think are legitimate concerns around this. I will go into them. You said it is time to get rid of the ideology. From my point of view, this represents a change in our enrolment because it does not require action from an elector or voter.

I turn to a couple questions on that. We currently have a signature on a form with an enrolment. We have had a number of discussions in this committee and the Senate committee the AEC comes before in estimates about the difficulty proving certain electoral offences and the burden of evidence required for the DPP to take action. I am concerned that, if we move to what I am going to continue to call automatic enrolment—simply because I think it is automatic in the sense that it does not require action from an elector—we are going to lack that signature from a voter. That worried me. If there are cases of potential electoral fraud, that is one less piece of evidence the commission will have in its armoury.

You currently have a form that you can compare signatures to if, for example, people are using declaration votes and have to sign the envelope. That will not be available under these provisions. I will go to Mr Pirani in a second but will give him some time to refresh his extensive knowledge of the act before he answers my question. Professor Costar, is that not a legitimate concern?

**Mr Costar:** You and I have had some fun debating these matters on this committee over the years, and I look forward to it continuing. I am not dismissive of concerns. I think it is a balance. We are back to the old thing about—as you well know, being a political scientist—liberty and democracy. It is a trade-off. Dr Clarke leans to liberty; I lean to democracy. He does not oppose democracy; I do not oppose liberty. It is a balance.

**Senator RYAN:** They are not necessarily inconsistent.

**Mr Costar:** You are quite right that longevity of statement does not mean we should agree with things. The earth was flat for a long time. I look to that equality of the evidence—and there is a lot of it about. You remember some years ago that Australian electoral systems and law were not much written about. It is very reassuring to see that there is an avalanche of books at the moment. Some of them have my name on them. A lot of them have Professor Orr's name on them. This is a good thing. These issues are being debated.

Before I answer what I think is your central question I say you have a touching faith in signatures as a verifying statement. I wish I could share it.

**Senator RYAN:** My point was that it is a piece of evidence that is available to investigators that is not available with an automatic enrolment regime.

**Mr Costar:** That runs to central technicalities, which I am sure the commission is more able than I to respond to. I just think, yes, it is a piece of evidence, but I would not want to rely on it very much. You spoke about fraud. What sort of fraud are you talking about? Double voting or something? Stacking rolls?

**Senator RYAN:** What I am concerned about is designing a system that narrows the options for all sorts of fraud, whether it be double voting, people voting on behalf of other people—absentee or other votes—or false enrolments. I am concerned about everything, and I would like to design a system that closes as many of those doors as possible.

**Prof. Costar:** Most of them are now closed. Go and have a look. I am very pleased that Mrs Bishop is interested in case law. I think the committee should look at the Chatsworth decision and study it carefully with respect to multiple voting. That killed off a number of conspiracy theories. The judge—

**CHAIR:** You might just summarise that briefly for those who are listening.

**Prof. Costar:** The Chatsworth case was a Queensland case. After the last Queensland election there was an unusual result. It was expected to result one way and it was narrowly the other. The defeated candidate took an action in the Supreme Court of Queensland on the grounds of multiple voting. I have written about this. The farrago of fantasy that was in the media and elsewhere before this case—and Mr Somlyay smiles at this; he has obviously read some of this—was astounding. The dead were voting, people were voting from football grounds and the electoral roll was so dirty that it could not be relied on. The Electoral Commission was so incompetent that it probably should have been imprisoned.

When we got into the court, what did the barrister for the plaintiff argue? Did he argue any of that? No. He said, 'There are some technical problems.' In the end, the judge examined things—they narrowed it down—and they got it down to 33 apparent cases of multiple voting. The judge, with assistance from counsel, went through each one of them. Three people had multiple voted. Guess where their place of living was? A nursing home. How did they multiple vote? They did a postal vote—

*Mrs Bronwyn Bishop interjecting—*

**CHAIR:** Just let him answer. This is consistent with evidence before us.

**Prof. Costar:** Can I answer the question? The chair asked a question; I am answering it.

**CHAIR:** Uninterrupted.

**Prof. Costar:** The people had cast a postal vote, because efficient commissions allow such things at nursing homes. Then family arrives on the day of the election, and says, 'Come on, Gran,' or 'Grandpa, we're off to vote.' They voted. No-one was convicted of anything. The result stood. When I talk about ideology—I love ideology—what I mean is I am doing a bit of a character check here—there is far too much alarmism about this. When we get down to tin tacks, when it gets into a court where judges do not listen to that stuff—newspaper reporters, talkback radio hosts can go on as much as they like—it gets serious. And, when it got serious, the reality was exposed.

**CHAIR:** Just for the record, I will be allowing some of my time to Senator Ryan and Mrs Bishop, so it cannot be said—

**Senator RYAN:** Chair, I appreciate that.

**CHAIR:** Does Mr Killesteyn want to add to that?

**Senator RYAN:** That is all interesting, but I was not asking about a specific case. Basically, you are not concerned about the lack of form, with a signature that the AEC has in its files, digitally or otherwise? It is a piece of evidence that could be important. If, for example, we are seeing different signatures on provisional votes—and I am not saying it has happened anywhere—I am trying to design a scheme that does not open up doors for fraud.

**Prof. Costar:** I did not come down in the last shower. People commit offences. You know that as well as I do. As you point out, historically, what is known as electoral corruption is, of course, as we know, rife in the United States. It is just out of control and everyone knows that. We have never suffered from that for all sorts of reasons—culturally, historically, administratively or whatever. I am a bit concerned. I am not naive. We know what happened in the Ehrmann case, in Queensland, where there was roll stacking. Ms Ehrmann was sent to prison for three years. What struck me about that case was how dismissive the main actors in that little fraud—and remember that Ms Ehrmann was the fall person in that; she was the foot soldier who got caught and was not the architect of that little rort—just seemed to treat corrupting the roll as normal politics. For genuine acts of fraud, I would like to see the penalties increased and imposed. I think a message has to be sent here. Admittedly, it does not happen often. This committee has expressed its concerns over the years about the DPP not pursuing cases. I am not in the DPP's mind but I presume they do not do it—and Mr Pirani is the expert on this, not me—because either the evidence is not convincing or the penalties are so small that it is not worth the effort. I think that is wrong.

**Senator RYAN:** Mr Pirani, I suppose you are the logical person I would like to have follow up on that particular question. There is no need for Mr Killesteyn and I to recount past debates on this!

**Mr Pirani:** The issue of signatures is something that most Commonwealth agencies are moving away from in relation to anything about evidence of identity. The process that is increasingly coming in for a whole range of schemes is that other identifiers are used. In relation to fraud and criminal matters, yes, a signature can be of some assistance in proving that it was the same person who did it; but in the context of an election the whole provisions that are in schedule 3 in preliminary scrutiny are designed to exclude votes where there is any doubt as to who the person is.

**Senator RYAN:** That would lose some of—

**Mr Pirani:** Those were the amendments that Senator Xenophon and the Senate agreed to when the evidence of identity requirements were changed for provisional voting, so that if there were any doubt we then have reference to some other document that we have.

Most of the other provisions in schedule 3 refer to things like postal vote applications, so it is a recent signature that you look for. When we were doing the preparation for the GetUp! case in 2010—not the one that was in the High Court, the Rowe case, but the one in the New South Wales Federal Court about electronic signatures and whether we could accept enrolment forms that had an electronic signature on—the evidence and the material that we looked at just made it very clear that we needed to move away from handwritten signatures, that they are not the best evidence in relation to the identity of a person and, particularly, in relation to court proceedings.

**Mr Killesteyn:** If I could just add to that, Senator? By itself, a signature has no intrinsic value as far as establishing or confirming the identity of an individual is concerned. It has to be compared with something. Certainly, we are finding that signatures change over time. So if you have an enrolment form that was done 10 or 15 years ago, you will find that the signature is different. I would suspect that even your signature has changed in the last 10 years. So the comparison is not particularly reliable at this stage. You really do need to provide a mechanism for other bases for establishing identity.

The mechanisms that are being used by Centrelink and roads and traffic authorities are considerably more reliable because they are based on a gold standard, if you like, of proof of identity as agreed by both Commonwealth and states and that is the reliance on multiple original documents.

**Mrs BRONWYN BISHOP:** There are several points I want to make. First of all, I found Professor Costar forgot to mention the case of Mundingburra where, of course, fraud was proved, there was a by-election and government changed hands. It was the case of the election of Mr Frank Tanti. That was fairly significant, I think. Further, back in 1980 there was a by-election in Castlereagh. It was won for the Labor Party in New South Wales for Premier Wran by Mr John Patrick Begg, who in 1984 was giving—

**CHAIR:** Sorry, which by-election? Neville Wran never lost a by-election in his 10 years in New South Wales.

**Mrs BRONWYN BISHOP:** No. That is the point I am going to make.

**CHAIR:** But there has never been a suggestion of fraud, let us put it that way.

**Mrs BRONWYN BISHOP:** It was Castlereagh. In 1984 Mr Begg addressed a meeting of a group on the Central Coast which was set up for organisers of a campaign 'Work against the establishment of power stations'. In the course of his speech, Mr John Patrick Begg, who was recorded at the time, said that one of the things with the Castlereagh by-election, which was a transitional Country Party seat, was that they said the Labor Party had no chance of winning, but, 'Once again, getting back to basics, there were beautiful advertising slogans'. He continued:

...I just sat down one day and I, you know, sort of got myself and I thought to myself this is going to be close Now, you know, I then went down—there's one office, the regional newspaper office, and Castlereagh started at Dubbo and went right through to Bourke - it was huge -big electorate—and I went to the local thing and I went—it took me two days - and I went through twelve months and looked at the obituaries and I got everyone that died in the past 12 months and then I compared them to see if they were on the roll—

**CHAIR:** If you want to use your time on this, keep using it—it is not worth reading out.

**Mrs BRONWYN BISHOP:**

and there were 400 on the roll. So I sent little people out to vote for them on these blokes' behalfs and, do you realise, we won the seat by 330 votes.

In other words, to say that there is no evidence about fraud, that really it does not have to be worried about—it is far more important just to get people on the roll, not to care about integrity of the roll—is a philosophical point. Professor Costar, I reject your interpretation of what the duty is as opposed to what I think the duty is and what we on this side think. If you go to the electoral roll there is an obligation on individuals to enrol and to keep their address is up-to-date, and if they fail to do so it is strict liability—they are to be prosecuted. Yet we have heard from the Electoral Commission that there has never been a prosecution.

So at every turn what I hear from the Electoral Commission—and perhaps, Mr Killesteyn, you could tell me why this is so—is not evidence coming from you; I hear advocacy. You advocate for the position but you do not give us any evidence or cases or anything else which the committee can take and adjudicate upon. We only hear you advocating for the majority position on this committee.

I would go to the question of the idea that has been longstanding since we have had a roll that we base it on where somebody lives. Residency is imperative in the test that you are applying. You are saying that because the RTA says this vehicle is registered at that place and that is where the person puts it on the licence, ergo that is their address. If we go back to case law—and Professor Costar likes case law, as I do—going back to Professor Orr's book:

Residency has a more settled meaning because it is widely used in other areas of the law as well as having a history of electoral interpretation. In the case of Fox and Sturt, Lord Denning laid down several principles to clarify electoral residency: (1) it is not exclusive—a person can have several residences; (2) temporary living at an address does not establish or break residency; (3) residency implies a considerable degree of permanence. Another United Kingdom case affirmed that absolute permanency as opposed to some degree of continuity was not a pre-requisite for electoral residency.

The point I am making to you is that you can have an address where a vehicle is registered and a person has that address on their licence but is not their residence at all and yet that is the only address you write to; you do not write to their old address—and we are told by Mr Costar it is because a postage stamp is too expensive to do so.

I have asked for and received copies of the letters that you write to people. Only one of them mentions there is a fine. There is no tone in that letter that says, 'You are obliged, this is required by the law and there is strict liability, that you will be fined if you do not comply.' It is a nice jolly, little letter that says, 'You ought to be on the roll.'

**CHAIR:** Do you have a question? I will come to you, Professor, don't worry—you will both get a chance to answer. Let her go and then we will move to another question.

**Mrs BRONWYN BISHOP:** I want to ask you: why it is you have not prepared information for this committee that we can ask serious questions about what you are basing your advocacy. Why couldn't you have had the information I ask for prior to this hearing? This is the information that said that of those people who were automatically enrolled in New South Wales only 64 per cent of them voted. Ninety-two per cent of people who enrolled in the ordinary manner vote. That to me indicates that there is a great deal of error in the automatic enrolment. Similarly, of the ones you have written to subsequent to that election, we are told by Mr Green that only 12 per cent of those have responded to your letters and actually sought to enrol, which tends again to cast great doubt upon the value of this process. Why were you unable to tell me where the people who were so enrolled, what electorates they went into, where the 12 per cent that you actually wrote to were enrolled, what age are they, what is the demographic of those people—

**CHAIR:** I ask you to bring your question/statement to a close.

**Mr Killesteyn:** Let me deal with that issue firstly, Mrs Bishop.

**Mrs BRONWYN BISHOP:** I think you might have to come back again.

**Mr Killesteyn:** That detail is now ready. But let me just put this into context. If we are looking specifically at New South Wales, which is what your questions related to, that is detail that is held by the New South Wales Electoral Commission—

**Mrs BRONWYN BISHOP:** And sent to you!

**Mr Killesteyn:** Please, Mrs Bishop, let me finish. That is detail that is held by the New South Wales Electoral Commission. We are talking about 220,000 records which, to provide you with the analysis that you needed, needed to be analysed to go through to give you the split up across the New South Wales electorates. That took the New South Wales Electoral Commissioner some time. Indeed, it was not my information to give you. It is his information and I had to write to him and ask him to provide that information on behalf of the committee. I did so on the day that the questions were provided and he responded to that last night. So the information should be provided to the committee today.

**Mrs BRONWYN BISHOP:** Why wasn't it here this morning?

**Mr Killesteyn:** Because it is being compiled. It will be provided to you today. Put it into context: 220,000 records needing to be analysed and a request from the New South Wales Electoral Commissioner.

**Mrs BRONWYN BISHOP:** Yeah, right!

**CHAIR:** When was the request received by the commission?

**Mr Killesteyn:** I think it was Thursday or Friday.

**CHAIR:** Give him a break! Professor Costar?

**Mr Killesteyn:** Can I just address one other issue of clarification, please. The data that is being used from the Roads and Traffic Authority is not registration data; it is drivers licence data. I can go through every single roads and traffic authority agency in Australia—right now, if you like—and show that the information that they are asking about address is place of living. They are seeking original documentation. It is the place of living of the individual—

**Mrs BRONWYN BISHOP:** You could live in two places.

**Mr Killesteyn:** not the address at which a motor vehicle is garaged at; it is the individual that they are concerned about. It is drivers licence data—

**Mrs BRONWYN BISHOP:** You could have two places.

**Mr Killesteyn:** not motor registry data.

**CHAIR:** Professor Costar and then Mr Griffin.

**Prof. Costar:** I do not have Professor Orr's book in front of me. I would be surprised if he did not qualify those UK cases about residency, because the law related to residency and electoral law in Australia and the UK are wholly different—wholly different. It does not surprise me that the UK electoral law over that is in the courts, because the UK electoral law is deficient. It is administratively deficient and it is policy deficient. We have all known that for years.

On the question of Mundingburra, as I recall it, Mundingburra was decided by a vote, I think. It was very small. It was the fingers of one hand. As Mr Justice Isaacs pointed out in the Bendigo case in 1920, if you are under a preferential voting system—and remember preferential voting was young in 1920—you could have an electorate, let us say it has 40,000 people in it and you do a count and you get a result; you do another count and you will get a slightly different result; do another count and you will get another slightly different result. That is because, as His Honour pointed out, people number ballot papers inexactly. They do not number them as though they were perfect. People have different handwriting. In a preferential system you can keep voting. So if you get beaten in an electorate by one or three or four votes, you are a fool not to challenge it, because there is a statistical chance you are going to get up.

On Castlereagh, Mrs Bishop, I did not quite twig at the beginning of that—what was the source of that story? I did not quite get it.

**Mrs BRONWYN BISHOP:** The person was taped and I tabled the tape in the Senate.

**Prof. Costar:** So this was not evidence delivered in a court? This was taped by somebody?

**Mrs BRONWYN BISHOP:** This was taped.

**Prof. Costar:** It sounded very much to me—

**Mrs BRONWYN BISHOP:** The point I was making—

**CHAIR:** You will get a chance. Let him answer the question.

**Prof. Costar:** This sounded very much to me like Dr McGrath channelling Frank Hardy in his cups.

**Mrs BRONWYN BISHOP:** Nothing to do with Dr McGrath at all—nothing!

**Prof. Costar:** It sounded exactly like it. It is a classic conspiracy case: 'He said, we said.' If you read Amy McGrath channelling Frank Hardy he rigged every election the country ever had, and a few in the Philippines as well.

**CHAIR:** Professor Costar, thank you—you have made your point.

**Mrs BRONWYN BISHOP:** Professor Costar, thank you for that cheap shot.

**Prof. Costar:** There was nothing cheap about it. I am shocked!

**CHAIR:** Very quickly Mrs Bishop because I am going to Mr Griffin.

**Mrs BRONWYN BISHOP:** That tape had absolutely nothing to do with either of those two people you have just slandered; nothing at all.

**Prof. Costar:** We are covered by parliamentary privilege; I cannot slander anybody.

**CHAIR:** Professor Costar. As I understand from what Mrs Bishop has said, there is a tape at a public meeting—

**Mrs BRONWYN BISHOP:** Which was tabled in the Senate.

**CHAIR:** She tabled it in the Senate, and the quality of it is such that it never went anywhere. No one has taken it up, no one has investigated it—be it the police, be it in court—

**Mrs BRONWYN BISHOP:** Precisely my point.

**CHAIR:** because why? It is not worth the tape it has been taken on.

**Mrs BRONWYN BISHOP:** Excuse me, I am not finished.

**CHAIR:** That is the only conclusion I can draw. You have had 20 minutes, now 25. You are finished.

**Mrs BRONWYN BISHOP:** I did not, I heard a lot from Professor Costar. The point I was making was this—and I will just make the point very strongly: Professor Costar seems to say, 'Fraud doesn't happen. Don't worry about it—

**CHAIR:** He did not say that.

**Prof. Costar:** I said nothing of the sort.

**Mrs BRONWYN BISHOP:** The Shepherdson inquiry, the Mundingburra inquiry—that I just read out is evidence of fraud.

**CHAIR:** Mrs Bishop, he did not say that. Don't verbal him.

**Mrs BRONWYN BISHOP:** Oh, yes he did.

**CHAIR:** The tape speaks for itself, and the fact that your tape was never investigated, I think, speaks for itself. Mr Griffin.

**Mrs BRONWYN BISHOP:** The election was 1980; the tape was 1984.

**CHAIR:** And it has never been investigated. This is the first I have heard of it and it sounds like a load of garbage. Mr Griffin.

**Mr GRIFFIN:** I was going to ask who killed Kennedy, but I will leave that one for later. The issue of silent electors—something that Dr Clarke and I had a discussion about at a previous hearing. Arguably, these days given issues around domestic circumstances, it may well be that there is an argument around the question of whether more people may wish to avail themselves of silent elector status. There is an argument that if people wish to—and, frankly, in my view—they should have some opportunity to. Can I get some comments from people with respect to that issue and also around the question of what currently happens in relation to requests for silent elector status? Is it refused? Is it a situation that is discouraged because of the actual criteria required to be met—any points about that? Also, from that, from the Commission's point of view, whether they have got any particular view about whether something that should be looked at is whether there should be a greater capacity for people to access silent elector status. My question is at all three.

**Mr Killesteyn:** Perhaps I can start. Firstly, the processes that have been designed for both direct update and direct enrolment take into account the silent elector status in two ways. Firstly, if a person already has silent elector status, they would be excluded from any direct action by the commission. If we were aware of a change of address, we would treat them normally—as we currently do with the CRU process—and simply write to them and ask them to update their details.

We also have in place that, if an address is one in which a silent elector is recorded as living, we would be conscious of that and exclude any person who is now moving to or registered at that address. We would accept



that there is a potential for that address to include others. For instance, you might have a family member who is of a different surname using that same address. That would also be excluded from any direct action.

**Mr GRIFFIN:** You expand those that are covered by silent elector status to those who may well—

**Mr Killesteyn:** What I am saying is that in terms of direct action, both of those circumstances would lead us to exclude the individual either at the address or with the silent elector status already from having any direct action. In terms of expansion of the criteria, the legislative criteria require a person to present evidence to the divisional returning officer as to the reasons why they want to suppress their address from the electoral roll. My recollection of the numbers would be around 85,000 people. The commission is reasonably sympathetic to claims for silent elector status.

**Mr GRIFFIN:** So that is 85,000 who have it?

**Mr Killesteyn:** Who are currently enrolled as silent electors.

**Mr GRIFFIN:** Are there any stats on people being knocked back for it or any evidence that that occurs?

**Mr Killesteyn:** I do not have them with me but I can take that on notice.

**Mr Carpay:** Can I perhaps add one detail. In the data that the AEC receives from other agencies, if people are in some way flagged on those systems as what we would describe as silent, we do not actually receive that data. Those agencies have their own screening processes to ensure that that status is protected and never flows to us in the first place.

**Mr GRIFFIN:** Their process also involves the same sorts of circumstances, as I understand.

**Prof. Costar:** Can I answer that in a slightly different way. You raise the issue of awareness and Dr Clarke raised it in his opening statement and Mrs Bishop raised it too. I think this is an important matter and there is a deficiency amongst voters of knowledge about the electoral processes. We could blame lots of people for that—electoral commissioners, academics and all sorts of people. I want to put someone in the dock for it: the media. The media in this country are largely innocent of important matters of electoral law and systems. This hearing will not be reported in the media.

**Mr GRIFFIN:** It might make a blog on the *Australian*.

**Prof. Costar:** Yes, it might get there. I am told by senior journalists that, whenever a story comes into a newsroom that has got the words electoral or constitutional attached to it, everyone dives under their desk. No-one wants to write about it. The howlers that get into the media about electoral processes are appalling. I suspect lots of people who would be quite eligible to apply for silent enrolment do not even know it exists. But that is not the commission's fault. The media is not interested in it. They do not care.

**Dr Clarke:** The issue here is the inaccessibility of silent elector status. All power and discretion, as we submitted to the previous hearing, is in the commissioner's hands. The default is that the address is open. Individuals have to muster a strong argument and a bunch of evidence, which is in many cases itself sensitive, in order to try to convince the commissioner on his terms that they should be one of the 85,000. We believe that there are serious difficulties in that setup. I also did not understand the commissioner's statement earlier because we are talking here about new enrolments. New enrolments that he is directly enrolling will not have silent elector status. They will default to open information—

**CHAIR:** I did not take it that way. Frankly, I do not think that power is there. My understanding is that people can have their silent elector status if they fit certain requirements.

**Mr Killesteyn:** Basically they simply need to provide a statutory declaration about the circumstances they are suggesting require silent elector status. My evidence earlier was that we are very conscious of the potential for the disclosure of address of silent electors and in this direct update and direct enrolment process we will exclude anybody where there is any potential for us to be disclosing inappropriately. That includes people who are already silent electors and people who are living at or going to an address which was otherwise a silent elector address. It is a very protected system to avoid the sorts of concerns that you have raised.

**Prof. Costar:** Chair, may I ask Dr Clarke a question?

**Mrs BRONWYN BISHOP:** We are asking the questions.

**CHAIR:** A request has been made. I laid out the requirements of the round table earlier and it specifically allows witnesses to ask other witnesses questions. I will allow Professor Costar to ask Dr Clarke a question.

**Mrs BRONWYN BISHOP:** It is not going to come out of our time.

**CHAIR:** It is not coming out of your time; it is coming out of committee time.

**Prof. Costar:** I am interested in the whole thing about the entitlement of silent electors. There is no cheapness in this question. If the commissioner is not to be empowered to make this final decision, what alternative would you put forward? Who else could do it? If a person says, 'I wish to be a silent elector for the following reasons,' your submission says that the commissioner should not be the final judge of this. Who or what should?

**Mr GRIFFIN:** In the spirit of the round table, I might answer that question, if I could. It is a delegated authority, effectively, isn't it? There is a set of entitlements under the act to which you are responsible, but it is effectively a delegated authority to the divisional returning officer in the circumstance. So it is therefore down at that level rather than being seen by the commissioner as such. I think that is an important difference.

The point about a delegated authority in those circumstances, I would argue, is that it is discretionary but, frankly, it is a discretion if applied for. A divisional returning officer would need to have a good reason to refuse because the nature and the balance with respect to the right is, if someone is seeking to exercise that discretion, the balance is with them and in those circumstances not with the returning officer to refuse.

**Dr Clarke:** Section 104 creates difficulties for the commissioner with respect because it is highly prescriptive. It is all very well to delegate but when the prescription says that the acceptable reason is solely because it places the personal safety of the elector or members of their immediate family at risk, and that is the only basis upon which the decision can be made. The onus is such that the Electoral Commissioner or the divisional returning officers are going to knock back a great many poorly composed statutory declarations which lack the necessary convincingness.

**Mr GRIFFIN:** I doubt that very much because I think the capacity for a divisional returning officer to decide that a stat dec was not bona fide is very limited.

**Mr Killesteyn:** Two points I would make: primarily, the evidence is a statutory declaration and, while I have taken on notice to get the statistics of the number that are refused, it is rare occurrence; it is an exception rather than the rule. The other point I would make is the general point about electoral rolls being transparent. In a system which is based on enfranchisement through being on the roll, it is important that people have an opportunity to publicly inspect the roll because that is an additional basis upon which the integrity of the roll is tested. If we found that there were hundreds and thousands of people who were suddenly claiming silent elector status, we would have a problem.

**Mr GRIFFIN:** That is a fair point. I actually agree with Dr Clarke in this respect. I think the nature of the clause is restrictive and it is the sort of clause which would mean that an elector being made aware of 'you need to provide proof' would be necessarily potentially discouraged from seeking to achieve that status. Where I disagree with him is in the context of when someone does make application: it would be a very brave, foolhardy divisional returning officer who, when someone presented and said, 'I am in fear of my circumstances' for whatever reasons, would say, 'That's nice, but I don't agree with you.'

**Mr SOMLYAY:** Going back to the point Mrs Bishop raised about the Shepherdson inquiry, that inquiry found that there was electoral fraud in Queensland not relating to the federal or state election but regarding false enrolment for the purpose of party preselections to make people eligible to vote for candidates in the party preselection. Have there ever been prosecutions regarding that sort of activity, that sort of electoral fraud; or does that go below the radar: we are only concerned with a fraudulent enrolment for the purposes of a general election?

**Mr Killesteyn:** The statutory requirements are proper enrolment and single votes. That is the basis upon the actions we have got available to us. As I recall as well, the Shepherdson inquiry was particularly around a state of the Queensland electoral roll, not the Commonwealth electoral roll. That was, I think, again over a decade ago, and since that time—again, with the encouragement of the joint standing committee and other measures, including the requirements of evidence of identity that were then instituted after that—the Commonwealth electoral roll is certainly of a higher integrity than what was at that time for the Queensland electoral roll.

**Prof. Costar:** You just raised a good warning against the current enthusiasm in some political parties in this country to move toward primaries. It is an invitation, is it not, to rule at the roll? That is what they were doing in Queensland, they were rorting a party preselection ballot. If you throw it open to a primary, whatever party it might be, the temptation to go stacking it would be delightful.

**Mrs BRONWYN BISHOP:** I do not think that is relevant to this inquiry.

**CHAIR:** A lot has been said that has not been relevant to this inquiry and it has not been from the witnesses.

**Mrs BRONWYN BISHOP:** Can we have some time back?

**CHAIR:** You will get some time back. You have already had two-thirds of the time. Let's be clear: you have had two-thirds of the time and you are less than half of the committee. I will look after you, as I always do.

**Mrs BRONWYN BISHOP:** And my questions are not going to be answered in time—

**CHAIR:** But I expect you to behave. Civility does not cost anything.

I want to ask a couple of questions in relation to schedule 2 in terms of declaration of votes and objection action. I think it is reinstating the previous provision for reinstatement, in broad terms, before it was amended by a former government. Do you have an estimate as to how many voters you anticipate might be reinstated as a result of that provision going back to its previous terms?

**Ms Neilson:** There is some sort of indication with previous election results. For the 2010 and 2007 elections, between 14 and 18 per cent of provisional votes were counted. Prior to that it was around the 50 per cent mark for the four elections before that.

**CHAIR:** How many thousands of votes does that translate into?

**Ms Neilson:** As a percentage: 87,834 in 1996, 90,512 in 2004 and in the 2010 election, 37,340 votes.

**CHAIR:** So, it is a substantial reinstatement of people who at the moment get knocked out, because of the way it is currently drafted. The presumption is against them being reinstated, even if there was an error of fact by the commissioner?

**Mr Killesteyn:** Yes, that is correct. If you look at the number of reinstatements in 2001 and 2004, prior to the legislation, there were 59,802 in 2001 and 61,451 in 2004. That dropped to 3,052 in 2007 and 1,460 in 2010.

**CHAIR:** So pretty substantial—and those are my words. Can I go to the commission's submission on page 10? You talk about age cohorts in tables A1 and A2. Your estimated enrolment participation of 18- and 19-year-olds is 53 per cent, 20- to 24-year-olds goes to 82 per cent and 25- to 29-year-olds is 85 per cent. It increases as people get a bit older. Is it your professional opinion, or that of the officers of the commission, that as a result of this bill the enrolment participation for younger people could increase? Or are there other strategies that are required to increase that enrolment participation along with this easier method of enrolment?

**Mr Killesteyn:** It goes to the data that we are proposing to use—that is, drivers licence data and Centrelink data. We get drivers licence data on a daily basis and we get Centrelink data on a monthly basis. On the assumption that most of the new licences that are being issued would go to people achieving driving age, then it is more likely that we will see some improvement in the percentage of younger people.

Centrelink is a little bit different, obviously, because there is a whole range of demographics about people who would be receiving benefits.

**CHAIR:** Sure. And that is coupled with the fact that they can provisionally enrol now from age 16, which is a recent amendment.

**Mr Killesteyn:** That is correct.

**CHAIR:** Would you anticipate that that would help increase the participation?

**Mr Killesteyn:** The other point though, as I said in my opening remarks, is that we are not seeing either direct enrolment or direct update as a panacea to the issues with the state of the roll.

**CHAIR:** I understand.

**Mr Killesteyn:** We will still continue a whole range of education programs, in particular in those areas that are more disadvantaged than others. The Northern Territory, for instance, with its large Indigenous population, is not likely to be an area where direct enrolment and direct update mechanisms will be terribly effective because we do not have the surety of the address and, sometimes, identity.

**CHAIR:** I promised to go back to Mrs Bishop, which I will now, briefly. I then intend that each of the witnesses, the commission, Dr Clarke and Professor Costar, will have the opportunity to give a 60-second summary to the committee as the end of their evidence.

**Mrs BRONWYN BISHOP:** Commissioner, I asked you earlier about the information I had asked you to give me and you told me that you had had to write to the commissioner in New South Wales and ask him for the information I sought. Is that what you said to me?

**Mr Killesteyn:** That is correct.

**Mrs BRONWYN BISHOP:** Then why is it that you have been writing letters to electors saying: 'Dear' whoever, 'the Victorian electoral commission,' or New South Wales electoral commission, 'recently advised the AEC that you have been automatically enrolled to vote for state and local government elections. However, due to differences in state and federal laws, you are not automatically enrolled to vote for federal elections'? In other words, you already had that material. You already have those lists.

**Mr Killesteyn:** Mrs Bishop, what was asked for was an analysis of newly enrolled electors or newly updated electors according to New South Wales electorates. In my view, that was a matter for the New South Wales Electoral Commissioner to provide to the committee, not for me. It is their process. It is their law, not mine, and I thought it was appropriate that the New South Wales Electoral Commissioner be given the opportunity to provide that information.

**Mrs BRONWYN BISHOP:** Which you already had.

**Mr Killesteyn:** Which I have some of.

**Mrs BRONWYN BISHOP:** So you did not get it last night, did you?

**CHAIR:** Civility costs nothing. If you have a supplementary, then you ask.

**Mr Killesteyn:** We have some of that information. Indeed, there are some delays. We were aware of about 150,000 records. You will see on information that has been provided by the New South Wales Electoral Commissioner that you will get up-to-date information covering 221,000 records. I still remain of the view that it is the New South Wales Electoral Commissioner's data. I might have it but it is in New South Wales Electoral Commissioner's data, not mine.

**Mrs BRONWYN BISHOP:** Correct, and you could have rung him up and asked him.

**Mr Killesteyn:** I did, Mrs Bishop, and I wrote him a letter formally.

**CHAIR:** Mrs Bishop, you have one more question and then you are finished because the hearing was supposed to finish at 11 am. You have one question and that is it—short and sweet.

**Mrs BRONWYN BISHOP:** I want to know why you do not write to both addresses when you are automatically changing people's addresses. I was told by Professor Costar that it costs too much. It is the cost of a postage stamp. Yet you write several letters to an address where somebody may not be living at all. I have read what you put in your submission. I do not accept that as a reason so I would like to know a substantial reason why you cannot write to both addresses.

**Mr Killesteyn:** I would have thought, Mrs Bishop, that a substantial reason is that it is not cost-effective to do so. If we wrote to the old address when we have credible, reliable information provided by Centrelink, or Australia Post or roads and traffic authorities that the person is now living at another address, it would be an absolute waste of taxpayer's money to write to the old address.

**Mrs BRONWYN BISHOP:** At every turn the authorities say—

**CHAIR:** Mrs Bishop, no. I told you were having one question, and that is it. I ask you now, Mr Killesteyn, to sum up in 60 seconds if there is anything further that you wish to say.

**Mr Killesteyn:** I just repeat: I am not advocating anything here. What I am seeking to do is to administer the Commonwealth Electoral Act, which provides that people should be on the roll, and to add to the tools that have been available to the Electoral Commission in a way which reflects modern expectations, modern technology and modern demographics.

**Dr Clarke:** I understand from a statement earlier from Mr Killesteyn that he is 'conducting a PIA'. This is news to the APF at least. Mr Killesteyn also said, 'I will publish it later.' I am not quite sure which 'later' he has in mind. It sounds as if it could be after the passage of the bill. I submit that that is a further procedural defect in addition to the others that we submitted in our document. We have been told on several occasions that this has been going on for 10 years. We have been told that it is a no-brainer and yet the evidence has not been made available in order for calm consideration to be given. We have had bits of evidence trickling out and bits of pseudo-statistics trickling out, together with a lot of polemic during the course of this hearing.

Civil society works very hard to provide evidence based submissions to the parliament because we believe that is the responsible thing to do. We do not believe that kind of responsibility has been shown by the proponents of this proposition. All of that information should have been on the table as input to the PIA process. The PIA process should have been completed before the matter came before the parliament. Now we are completely in a very strange time warp where this new PIA is concerned.

**CHAIR:** Thank you, Dr Clarke. Professor Costar, do you have something you wish to add?

**Prof. Costar:** Chair, I come here as a shameless advocate of this cause and I recommend that the committee recommend that the bill be passed.

**CHAIR:** I thank you all for your attendance here today. If you have been asked to provide additional material, I would appreciate it if you would forward it to the secretariat as soon as possible. You will be sent a copy of the transcript of your evidence, to which you may make corrections of fact.

Resolved (on motion by Mrs Bishop):

That this committee authorises publication, including publication on the parliamentary database, of the transcript of the evidence given before it at public hearing this day.

**Committee adjourned at 11:05**