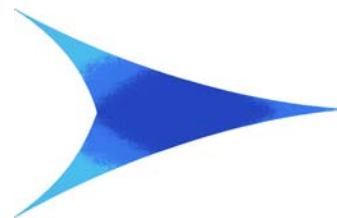


The Southern Cross Group

Promoting Mobility in the Global Community
www.southern-cross-group.org



Supplementary Submission to the Australian Parliament's
Joint Standing Committee on Electoral Matters

Inquiry into the Conduct of the 2001 Election and Matters Related Thereto

**Responses to Comments by the
Australian Electoral Commission in its Supplementary
Submission (No. 186) of 26 February 2003
and
Supplementary Recommendations**

Brussels and Canberra

5 May 2003

The Southern Cross Group is an international non-profit advocacy and support organisation seeking to speak for and work with the million-odd members of the Australian Diaspora worldwide.

© Copyright: Southern Cross Group 2003

This work is copyright. It may be reproduced in whole or in part subject to the inclusion of an acknowledgment of the source. No commercial usage or sale is permitted.

This submission is in response to a Committee Secretariat inquiry as to whether the Southern Cross Group (SCG) wished to comment on the statement by the Australian Electoral Commission (AEC) that while there were 10,636 Eligible Overseas Electors (EOE) registered at the time of the 2001 election, only 5822 actually voted.

The SCG is unable to give specific reasons for the low participation of EOE's at that election.

In general terms however, it must be remembered that the election was called and held in the weeks immediately following the September 11 terrorist attacks on New York and Washington DC. During those weeks the media in the United States, and to a lesser extent, the United Kingdom and elsewhere, was consumed with the aftermath of the attack.

The fact that the Australian Prime Minister was in Washington DC at the time of the attack received only brief mention in the US press. Subsequently, as is the case normally but more so, Australian news received extremely limited coverage. It is unlikely that the calling of the Australian election during October 2001 would have been seen as newsworthy.

Thus, Australians in the US, the UK and elsewhere were less likely to be aware of the forthcoming federal election than may have been the case for earlier elections.

In relation to postal voting by overseas Australians, the Committee already has before it comments by the Department of Foreign Affairs and Trade (DFAT) on the delays experienced in the receipt of ballot papers by a number of Australian missions. The US was also in the grip of panic over the anthrax scare which delayed mail processing by many weeks.

From our personal experience in Washington DC and discussions with polling booth staff at the Embassy, it is unlikely that many people who sought postal votes through the Embassy would have received them before the election was held. In the case of those that did, delays in the US postal system could well have persuaded electors not to bother lodging their ballot papers.

We also have anecdotal advice that ballot papers issued by Australian missions in other countries in response to postal vote applications were received too late to be effectively returned – Switzerland being one country in particular that has been mentioned.

THE BROADER ISSUES

Why are there so few Eligible Overseas Electors (EOE)?

The JSCEM asked the AEC if it was aware of any research on why there are so few overseas Australians registered as EOE. In response, the AEC indicated that it was unaware of any research and advanced its views as to why so few are registered:

- The low priority given by electors to maintaining enrolment during travel or relocation overseas.
- The lack of awareness of the possible repercussions of failing to inform the AEC of their absence from their enrolled address, such as removal from the electoral roll.

The SCG would suggest that this response overlooks the two basic reasons that at any point in time there will be very large numbers of overseas Australians who are disenfranchised.

The first, and root cause of the problem, is that there has been a failure over many years, by the AEC, to adequately inform departing Australians of their responsibilities to remain enrolled and the procedures to follow in registering as an EOE.

The second is that the legislation, even as amended in recent years, has the effect of quickly disenfranchising people who go overseas, in the following circumstances:

- Found to be not living at enrolled address – removal from the roll.
- Failing to respond to correspondence sent to the enrolled address within a relatively short timeframe – removal from the roll.
 - This probably catches many who have gone overseas without notifying the AEC and have been lulled by the general advice that voting is not compulsory for those overseas – see DFAT literature and the SCG primary submission to this inquiry (No. 148). The great difficulty is that although enrolment and voting by people outside Australia is not compulsory, if you are enrolled and you do not vote, or apply for a postal vote, your electoral enrolment maybe cancelled.

or

- did not vote simply because they were not aware that an election was to be held or did not have easy access to an overseas mission.

- Not requesting registration as an EOE within two years of leaving Australia – removal from the roll.
 - The ability to enrol as an EOE reflects a relatively recent amendment to the legislation – those that left Australia before that change have never had the opportunity to register as an EOE.
- Seeking to enrol from outside Australia and living overseas for reasons not related to your career or employment, or that of your spouse – the law currently excludes these people from enrolment from outside Australia.
- Not seeking initial enrolment within two years of leaving Australia – never on the roll.
 - This provision catches many young Australian citizens who turn 18 while living overseas with their parents.
- Intending to be away for more than six years – removal from the roll.
- Failing to request a postal vote or not lodging a ballot paper as an EOE – removal from the roll, even if your six-year period still has time to run.
 - But, if you are not registered as an EOE and you were overseas at the time of the election, that would probably be accepted by the AEC as a reasonable explanation of your failure to vote and you would avoid a fine and stay on the roll.¹
- Absent from Australia for six years – no adequate reason for a year-by-year extension – off the roll.

Obviously, over the years these provisions have had a cumulative effect and the number of disenfranchised overseas Australians will continue to grow at a rapid rate unless there are changes to the current legislation and the AEC improves the measures and efforts it takes to reach overseas Australians and departing Australians.

The alarming fact is that, once off the roll through an act of oversight, it is almost impossible to re-enrol from overseas.

¹ The AEC website currently states: “If you are not in Australia on polling day you will not be fined for not voting.”

There is also the anomaly of two-year windows of opportunity for overseas Australians when contrasted to a three-year election cycle in which there is an acknowledged flurry of enrolment and change of address activity in the few weeks immediately prior to the close of the rolls.² If citizens within Australia have an unfettered period in which to set things right, why are citizens outside Australia likely to find they have run out of time to take similar action? Seemingly, there is an element of discrimination here.

" SHORT-TERM " VERSUS " LONG-TERM " OVERSEAS VISITS

In the AEC submission and in some of the AEC literature the terms "short-term" and "long-term" are used to loosely differentiate the options open to those leaving Australia. Nowhere are these terms defined and they do not seem to be associated with the Australian Bureau of Statistics' classifications of "Temporary" (less than 12 months) and "Permanent" (12 months or more).

The AEC has introduced the concept of the "annotation alternative" for those going overseas short-term so that they can be marked "Temporarily Absent" on the electoral roll and, seemingly, suggests the EOE process is only for those going overseas long-term. The SCG assumes that the "Temporarily Absent" alternative is an internal administrative practice which allows the AEC to conclude that citizens absent from Australia short-term who fail to vote in an election for whatever reason have an acceptable explanation. The AEC website states that once a person is marked on the roll as "Temporarily Absent", "no action will be taken if you fail to vote while you are overseas".

One would think that if an EOE failed to vote at an election, for whatever reason, it should be possible for the AEC to take a decision not to cancel the individual's EOE status and remove them from the roll.

Again, this points to discriminatory practice towards those going overseas long-term, vis-à-vis those going on a short-term basis.

² In its 1998 Report, page 14, paragraph 2.23, the JSCEM itself said, "The greatest catalyst for enrolment is an electoral event".

PERIOD OF RESIDENCE PRIOR TO ENROLMENT

The SCG is extremely concerned about the new statement by the AEC that "...It is questionable whether a visit of 6 weeks constitutes residence for the purpose of enrolment."³ Indeed, this is at odds with a statement by the JSCEM in its report on the 1996 election about the Pococks' complaints.⁴

Some members of the SCG Committee have also received telephone advice from the AEC both before and after the 2001 election that a period of one month's residence in Australia is all that is necessary to qualify for enrolment.

The legislative provision in question is Section 99(1) of the *Commonwealth Electoral Act 1918* which reads: "Any person qualified for enrolment, who lives in a Subdivision, and has so lived for a period of one month last past, shall be entitled to have his or her name placed on the Roll for that Subdivision".

Also note Section 99(5): "The validity of any enrolment shall not in any case be questioned on the ground that the person enrolled has not in fact lived in the Subdivision for a period of one month." Does Section 99(5) apply to enrolments made from overseas under 94A? The SCG cannot see that it does not.

Also, the Application for Enrolment from outside Australia (Form ERO16OSw_0303) presently available from the AEC website, merely asks for the date of departure from Australia. It does not ask for the period that a person has been present in Australia.

If the AEC now takes the legal position that someone visiting Australia for 6 weeks is not "living" within the meaning of Section 99(1), then it should take more care to point this out on its form for enrolment from overseas. It should have a clear and transparent policy on this. And it should not be giving out telephone advice to the contrary. Or it should refuse an overseas enrolment on these grounds. Then there would be a "decision" within the meaning of the *Administrative Decisions (Judicial Review) Act 1977* which could be challenged in the Administrative Appeals Tribunal.⁵ But this sort of "aside", in brackets in para 3.17 of its latest submission, just casts doubt.

³ AEC Submission No 186 of 26 February 2003, para. 3.17, page 7.

⁴ The comment at para. 4.48, page 47 of the Report for the Inquiry into the 1996 election, reads: "While the Pococks should have registered as overseas electors before departing for France, their grievance is understandable, as there is now no means of rectifying their original oversight without them returning to reside in Australia for at least one month (thereby again becoming eligible for enrolment, in turn enabling them to register as overseas electors)."

In the AEC's main submission to the 1996 review, on page 28, at para 4.9.5 and 4.9.6 it is stated that the AEC told the Pococks on several occasions that they had to live somewhere for one month or more. The Pococks were diplomats, between postings often, and yet it seems that this sort of short visit would have been construed as "living" within the meaning of Section 99 of the Act.

⁵ See Section 121 of the Commonwealth Electoral Act 1918.

The SCG believes very strongly that the existing advice and practice that Australian expatriates can go home for one month or longer on an extended visit/holiday to re-enfranchise themselves should continue. It is, after all, the only way for the great majority of the some 500,000 disenfranchised Australian citizens overseas to get back on the roll at present.

SOME SUPPLEMENTARY RECOMMENDATIONS

The Committee may be interested in a number of supplementary recommendations of a more practical nature that we have included in the Attachment to this submission. These recommendations were drafted in mid 2002 and we had anticipated that they would be included and developed as part of our original submission. In the event, time prevented us from pursuing that approach. However, we believe that the ideas contained therein are still pertinent and could help to alleviate the problems that we have canvassed in our several submissions.

CONCLUSION

The Southern Cross Group remains strongly of the view that Australia should follow the international trend in relation to the enfranchisement of its overseas-based citizens. That is, people should only be denied the fundamental right to vote that attaches to citizenship if there is a very good reason for that denial.

There has never been any publicly articulated or debated justification for any of the existing limitations on the voting rights of overseas Australians.

SUPPLEMENTARY RECOMMENDATIONS OMITTED FROM THE ORIGINAL
SUBMISSION OF THE SOUTHERN CROSS GROUP (SUBMISSION 148)

Recommendation S1: That the Australian Electoral Commission (AEC) have a permanent shopfront at all international departure terminals in Australia to advise Australian citizens who are departing Australia on the procedures and options for enrolment and voting from overseas, to provide relevant accompanying information leaflets and forms, and to enable the voluntary on-the-spot completion and submission of the Application Form for Registration as an Overseas Elector before an Australian citizen departs Australia.

Recommendation S2: That the Commonwealth *Electoral Act 1918* be amended so that airline check-in personnel in international departure terminals in Australia must give every Australian citizen passenger aged 18 or over who checks in for an overseas-bound flight or sea voyage a leaflet which sets out basic information on overseas voting and enrolment as well as the AEC website address and contact details, and details the existence, location and opening hours of the AEC Shopfront in the particular terminal.

Recommendation S3: That the AEC set up a 24-hour telephone support line dedicated to overseas voting and enrolment queries and manned by personnel who have been specially trained which can be accessed by Australian citizens anywhere in the world through an international toll free number or by calling collect.

Recommendation S4: That basic information on overseas voting and enrolment be made available alongside passport application forms in post offices and passport offices throughout Australia.

Recommendation S5: That basic information on overseas voting and enrolment be made available to Australian citizens overseas who request a passport application form from an Australian consular post overseas, whether such request is made in person, by telephone, or in writing.

Recommendation S6: That Passports Australia, and Australian consular posts overseas simultaneously provide every Australian citizen issued with a passport with an AEC information leaflet on enrolment and voting from overseas.

Recommendation S7: That consular staff at Australian overseas posts be required to provide Australian citizens who register a child as an Australian citizen by descent, Australian citizens who apply for a certificate of evidence of Australian citizenship, and former Australian citizens who resume their Australian citizenship, as well as all other Australian citizens

with whom they deal in an official consular capacity, with an AEC information leaflet on enrolment and voting from overseas.

Recommendation S8: That the AEC engage in a comprehensive and ongoing training program for consular and other staff at Australian overseas missions so that any Australian citizen overseas who contacts an Embassy, consulate or mission with questions on enrolment and voting will receive friendly, competent and complete advice.

Recommendation S9: That the DFAT booklet Hints for Australian Travellers be revised to provide clearer and more extensive information on enrolment and voting from overseas.

Recommendation S10: That travel agents and airlines be required to provide each outbound Australian citizen passenger with the AEC leaflet at the time of issuance of international tickets.

Recommendation S11: That a full range of AEC literature and forms on overseas voting and enrolment be permanently available in the public areas of all Australian missions overseas so that Australian citizens visiting the mission for whatever purpose can pick up and take away proper information.

Recommendation S12: That posters be prominently displayed in international departure terminals throughout Australia drawing attention to the AEC Shopfront in the terminal and raising awareness among departing Australian citizens on the subject of overseas voting and enrolment.

Recommendation S13: That the AEC make available a Notification of Resumption of Residence in Australia Form for use by eligible overseas electors who are planning to shortly move back to Australia or who have recently again become resident in Australia, to facilitate the fulfilment of the obligation on eligible overseas electors in Section 94(5) of the *Commonwealth Electoral Act 1918* to give written notice to the Divisional Returning Officer of their change in circumstances.

Recommendation S14: That carriers operating flights and sea lines into Australia be required to give Australian citizens returning to Australia a Notification of Resumption of Residence in Australia Form before landing, along with the immigration and customs forms which are currently distributed on board.

Recommendation S15: That Notification of Resumption of Residence in Australia Forms be available in the immigration arrival area, baggage collection area and arrival meeting areas of international terminals throughout Australia.

Recommendation S16: That AEC Collection Boxes for the voluntary free on-the-spot lodgement of the Notification of Resumption of Residence in Australia Forms be prominently displayed in the immigration, baggage collection and arrival areas of international terminals throughout Australia.

Recommendation S17: That posters be prominently displayed in the immigration arrival area, baggage collection area and arrival meeting areas of international terminals informing returning eligible overseas electors of the opportunity to voluntarily complete and lodge the Notification of Resumption of Residence in Australia Form before they leave the terminal.

Recommendation S18: That the Australian Tax Office (ATO) issues a Guidance Note clearly stating that a person's inclusion on or exclusion from the Electoral Roll shall have no bearing in any way on the determination of whether a person is resident or non-resident for taxation purposes.

Recommendation S19: That information provided by the AEC on overseas voting and enrolment include a clear statement that a person's inclusion on or exclusion from the Electoral Roll while they are resident overseas is not a factor which will be considered by the ATO in any determination of their status as a non-resident or resident for Australian taxation purposes.

Recommendation S20: That the *Commonwealth Constitution 1901* be amended to include a broad and explicit constitutional right to vote for all Australian citizens.

Recommendation S21: That, in addition, the *Commonwealth Constitution 1901* be amended to include a provision that any legislative condition or limitation on the constitutional right to vote, which may at any time be laid down by the Australian Parliament, shall be based on objective and reasonable criteria, thereby making any such legislative limitation unambiguously subject to constitutional review by the High Court of Australia.

Recommendation S22: That the Department of Foreign Affairs and Trade missions in countries in which there is a significant number of Australian expatriates arrange, on behalf of the Australian Electoral Commission, the placement of newspaper advertisements drawing attention of Australians to forthcoming elections. The advertisements should include guidance on voting procedures available to Australians in that country.