

---

The Parliament of the Commonwealth of Australia

# **The 1998 Federal Election**

**Report of the Inquiry into the conduct of the 1998 Federal Election and matters related thereto**

**House of Representatives  
Joint Standing Committee on Electoral Matters**

June 2000  
Canberra

---

© Commonwealth of Australia 2000

ISBN

Photograph courtesy of the Australian Electoral Commission  
Cover by Octavo



# Contents

Foreword.....	ix
Membership of the Committee.....	xi
Terms of reference .....	xiii
List of abbreviations.....	xv
List of recommendations.....	xvii
Executive summary .....	xxvii
<b>Chapter 1 – Introduction.....</b>	<b>xxvii</b>
<b>Chapter 2 – Pre-election .....</b>	<b>xxvii</b>
<b>Chapter 3 – Election day.....</b>	<b>xxix</b>
<b>Chapter 4 – After the close of polls .....</b>	<b>xxix</b>
<b>Chapter 5 – Other issues .....</b>	<b>xxx</b>

## THE REPORT

<b>1 Introduction.....</b>	<b>1</b>
The 1998 Federal Election .....	1
Scope and conduct of the inquiry .....	4
Structure of the report .....	6
<b>2 Pre-election .....</b>	<b>9</b>
Selection of AEC staff.....	9
Other elections on polling day.....	12
Public awareness of the election.....	12

---

<b>Enrolment</b> .....	<b>14</b>
Accuracy of the Commonwealth Electoral Roll .....	17
Offensive names.....	21
Access to Roll.....	24
<b>Nomination</b> .....	<b>27</b>
Senate nomination issues .....	28
Death of a candidate .....	30
Independent candidate nomination issues .....	32
<b>Political campaigns</b> .....	<b>32</b>
Authorisation of electoral advertising .....	34
Caretaker conventions .....	36
How To Vote cards .....	37
Truth in political advertising.....	42
Dear neighbour letters.....	44
<b>Declaration voting</b> .....	<b>45</b>
Increase in declaration voting.....	47
Pre-poll voting.....	48
Antarctic voters.....	52
Postal voting .....	52
<b>Mobile polling</b> .....	<b>60</b>
Remote mobile polling team 16, Northern Territory .....	61
Problems on other mobile teams.....	64
<b>3 Election day</b> .....	<b>67</b>
<b>Polling booths</b> .....	<b>67</b>
Polling booth concerns .....	69
Ballot paper shortages .....	71
Railway Side polling booth – Alice Springs .....	72
<b>Voting on election day</b> .....	<b>78</b>
Assisted voting .....	78
Provisional voting .....	84
Voting by prisoners.....	89
<b>Fraudulent enrolment and voting</b> .....	<b>90</b>
Accuracy of the Commonwealth Electoral Roll .....	90

Security of ballot papers .....	91
Fraud in particular Divisions .....	92
Dual and multiple voting .....	93
Voting in the name of a deceased person.....	97
Conclusion.....	98
<b>4 After the close of poll .....</b>	<b>99</b>
<b>Conduct of the count .....</b>	<b>99</b>
Distribution of first preferences.....	99
Two candidate preferred count.....	99
Fresh scrutiny.....	102
Preliminary scrutiny of declaration votes.....	102
Declaration of poll.....	103
Recount procedures .....	104
Scrutiny of Senate ballot papers .....	104
National tally room.....	105
<b>Compulsory voting.....</b>	<b>106</b>
<b>The full preferential voting system.....</b>	<b>108</b>
Misunderstanding of full preferential voting system .....	108
Concern with current voting system .....	109
<b>Alternative voting systems.....</b>	<b>111</b>
Optional preferential voting .....	111
Langer-style voting .....	113
Above the line voting in the Senate.....	115
Other alternative voting systems .....	117
Conclusion.....	120
<b>5 Other issues .....</b>	<b>123</b>
<b>Funding and disclosure.....</b>	<b>123</b>
Funding entitlements .....	123
Disclosure.....	126
Streamlining disclosure .....	127
Disclosure concerns .....	132
Tax deductibility of donations .....	133

Tax deductibility of donations to independent candidates.....	134
<b>Registration of political parties.....</b>	<b>134</b>
Eligibility for registration .....	135
Party constitutions .....	136
Registration fee .....	137
Party names .....	138
Front parties .....	139
AEC review of registered parties.....	139
<b>Section 44 of the Constitution .....</b>	<b>141</b>
Sections 44(i) and 44(iv) .....	142
<b>Election litigation.....</b>	<b>144</b>
Heather Hill petitions .....	145
McClure and related petitions.....	145
Ditchburn petitions.....	146
A further petition .....	146
Costs in election petitions.....	147
Responsibilities in Electoral Litigation .....	147
<b>Redistributions .....</b>	<b>148</b>
<b>Four year terms .....</b>	<b>150</b>
<b>ANAO audit of the AEC.....</b>	<b>152</b>
<b>Process of election review .....</b>	<b>153</b>

## **MINORITY REPORTS**

<b>Minority Report—Senator the Hon John Faulkner, Mr Michael Danby MP &amp; Mr Laurie Ferguson MP (ALP).....</b>	<b>155</b>
<b>Minority Report—Senator Andrew Bartlett and Senator Andrew Murray .....</b>	<b>161</b>

---

**APPENDICES**

<b>Appendix A – List of Submissions.....</b>	<b>185</b>
<b>Appendix B – List of Letters Submitted.....</b>	<b>197</b>
<b>Appendix C – List of Exhibits .....</b>	<b>203</b>
<b>Appendix D – List of Hearings and Witnesses.....</b>	<b>205</b>

**LIST OF TABLES**

Table 1.1	Declaration vote statistics .....	2
Table 1.2	Voter turnout at federal elections .....	2
Table 1.3	Informal voting at federal elections .....	3
Table 1.4	1998 House of Representatives results .....	3
Table 1.5	1998 Senate results .....	3
Table 1.6	Comparative costs of expenditure on elections .....	4
Table 2.1	Electors enrolled by State/Territory as at 7 September 1998.....	15
Table 2.2	Declaration vote statistics .....	48
Table 5.1	1998 election funding payments .....	124







## Foreword

The Joint Standing Committee on Electoral Matters, and its predecessor, the Joint Select Committee on Electoral Reform, have inquired into the conduct of every federal election since 1983. The body of work produced by these inquiries has contributed to Australia's distinguished electoral reputation; encouraged steady and appropriate reform of the electoral system; corrected deficiencies; and advocated the adoption of relevant procedural and technological advances.

This report maintains the approach established in previous reports by recommending a series of reforms to discrete aspects of the electoral process in order to maintain a high standard for the conduct of the next and future federal elections.

The report contains 59 recommendations, the majority of which are concerned with minor improvements across all aspects of the federal electoral system. However, the Committee recommends substantial changes to a small number of electoral processes. One area in which substantial changes have been recommended is the registration of political parties, with the Committee recommending improvements to ensure that only legitimate political parties are eligible for registration. Another area identified for improvement is the security of the Commonwealth Electoral Roll, with changes recommended throughout the report that, combined, will increase the accuracy of the Roll significantly. Finally, the Committee has made a series of recommendations aimed at improving the transparency of certain aspects of political campaigning, specifically the distribution of postal vote application forms and the authorisation requirements for How To Vote cards.

I would like to take this opportunity as Chairman to thank the Australian Electoral Commission for its cooperation with the Committee during the conduct of this inquiry. I would also like to thank all members of the public who participated by either making submissions or appearing at public hearings.

I would like to acknowledge the work and patience of the secretariat both in liaising with the public and with the preparation of the report.

Finally, I would like to express my appreciation for my Deputy Chair, Mr Laurie Ferguson MP, and all members of the Committee for their energetic participation in this inquiry. The spirit of cooperation fostered in the Committee, particularly in relation to some of the more intractable matters, has ensured an outcome that will enhance Australia's already robust electoral system.

**Mr G R Nairn MP**  
**Chair**



## **Membership of the Committee**

**Chair**            Mr G R Nairn MP

**Deputy Chair**   Mr L D T Ferguson MP

**Members**        Senator A J J Bartlett

Senator A J M Murray

Senator R L D Boswell (from 30/6/99)

Senator K M Synon (until 30/6/99)

Senator the Hon J P Faulkner

Mr M D Danby MP

Senator P R Lightfoot (until 30/6/99)

Mr J A Forrest MP

Senator B J Mason (from 1/7/99)

Hon A M Somlyay MP

## **Committee Secretariat**

**Secretary**                    Ms Bev Forbes

**Senior Research Officer**    Mr Kevin Bodel

**Research Officer**            Ms Renée Stafford

**Administrative Officers**      Ms Belynda Zolotto

Ms Shari Rogers

Ms Lucinda McIntyre

Ms Michelle Causer

Mrs Lorraine Hendy





## **Terms of reference**

That the Joint Standing Committee on Electoral Matters inquire into and report on all aspects of the conduct of the 1998 federal election and matters related thereto.





## List of abbreviations

ABC	Australian Broadcasting Commission
AEC	Australian Electoral Commission
AFP	Australian Federal Police
ALP	Australian Labor Party
ANAO	Australian National Audit Office
ATSIC	Aboriginal and Torres Strait Islander Commission
ATSIEIS	Aboriginal and Torres Strait Islander Electoral Information Service
CCD	Census Collection Districts
DPID	Delivery Point Identifiers
DPP	Director of Public Prosecutions
DRO	Divisional Returning Officer
EST	Eastern Standard Time
HTV	How To Vote
JCPAA	Joint Committee of Public Accounts and Audit
JSCEM	Joint Standing Committee on Electoral Matters

LP	Liberal Party
MLA	Member of the Legislative Assembly
MP	Member of Parliament
NTCLP	Northern Territory Country Liberal Party
OIC	Officers in Charge
RMANS	Roll Management System
TCP	Two Candidate Preferred
VALUE	Voters Against Legal Unfair Elections





# List of recommendations

## 1 Introduction

## 2 Pre-election

### Recommendation 1

That the AEC assess the effectiveness of its staff selection procedures to ensure that it continues as an independent, professional and ethical organisation that is respected by the people who use its services. (para 2.12)

### Recommendation 2

That the AEC devise a procedure for ensuring that polling for federal elections is not compromised in any way by the AEC's obligations to conduct other elections, and that the AEC ensure that there is appropriate liaison between it and State and Territory electoral offices concerning the conduct of overlapping elections, including ensuring that State and Territory officials receive appropriate training and information on the requirements of federal electoral legislation. (para 2.14)

### Recommendation 3

That section 155 of the *Commonwealth Electoral Act 1918* be amended to provide that for new enrolments, the rolls for an election close on the day the writ is issued, and for existing electors updating address details, the rolls for an election close at 6.00pm on the third day after the issue of the writ. (para 2.26)

### Recommendation 4

That the time period for enrolling as an overseas elector be a uniform two years from the date of departure from Australia, regardless of whether the elector was previously enrolled in Australia. (para 2.29)

**Recommendation 5**

That the relevant sections of the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to allow overseas electors to use a photocopy of their passport certified by the elector to confirm their personal details in circumstances where it is not possible to obtain an authorised witness' signature when either enrolling as an overseas elector or making a postal vote from overseas. (para 2.32)

**Recommendation 6**

That the AEC investigate and report on the potential impact of the proposed changes to the witnessing and enrolment provisions effected by *Electoral and Referendum Act (No. 1) 1999*. This report should include information on:

- The potential financial impact of these changes on new enrollees;
- The potential impact on enrolment numbers; and
- The potential cost to the AEC of setting up and administering these new systems.

Where the changes have been implemented, the AEC should provide details of studies it has done on the potential impacts and the actual impacts. (para 2.36)

**Recommendation 7**

That the *Commonwealth Electoral Act 1918* be amended to make the basis of enrolment the elector's address, and that the objection provisions be amended such that an elector can be removed from the Roll when it can be shown the elector no longer lives at their enrolled address.

If an elector moves within their Division, does not re-enrol, and is removed by objection, their provisional vote for their Division will be counted, provided their last enrolment was within that Division and was since the last redistribution or general election; and

If an elector moves outside their enrolled Division, but remains within the State/ Territory, and claims a vote within their old or new Division, their vote in the Senate will count but the House of Representatives vote will not count. (para 2.48)

**Recommendation 8**

That the *Commonwealth Electoral Act 1918* be amended to allow the Divisional Returning Officer to exclude from enrolment any name that is

invalid, and that the criteria for determining an invalid name be developed by the AEC in consultation with the Office of Parliamentary Counsel. (para 2.55)

#### **Recommendation 9**

That the federal Attorney General appeal to his or her respective state and territory counterparts through the Standing Committee of Attorneys' General that there is a need for each state or territory Registrar of Births, Deaths and Marriages to tighten their criteria in relation to the registration of legal names. (para 2.56)

#### **Recommendation 10**

That Part X of the *Commonwealth Electoral Act 1918* be amended to make decisions by a Divisional Returning Officer in relation to the enrolment of names appealable to the Australian Electoral Officer and the Administrative Appeals Tribunal. (para 2.58)

#### **Recommendation 11**

Subject to the JSCEM acceptance of matters raised in the AEC's internet issue paper, that the publicly available Commonwealth Electoral Roll be provided on the AEC internet site for name and address/locality search purposes, and that the Roll be provided in CD-Rom format with the same search facility to public libraries without internet access. Both the internet and CD-Rom Roll should be updated monthly subject to search capacity being limited to individual names and addresses on the Roll. (para 2.65)

#### **Recommendation 12**

That the *Commonwealth Electoral Act 1918* be amended to allow access to an electronic version of the marked Roll and that this right of access should be extended to both candidates and party political organisations. (para 2.72)

#### **Recommendation 13**

That the *Commonwealth Electoral Act 1918* be amended to include a schedule setting out an alternate layout for the Senate ballot paper and that the AEC consult with the Joint Standing Committee on Electoral Matters on the alternate design. (para 2.82)

#### **Recommendation 14**

That s211 of the *Commonwealth Electoral Act 1918* be amended to allow for the amendment or withdrawal of Group Voting Ticket statements up to the closing time for the lodgement of such statements; that such amendment or withdrawal may only be made by the person who lodged

the original statement; that a further statement may be lodged prior to the closing time following the withdrawal of the original statement by any persons eligible to do so under s211(6); and that should a Group Voting Ticket statement be withdrawn, and a new statement not be lodged for the group prior to the closing time for lodgement, the group will not have a Group Voting Ticket square printed on the ballot paper. (para 2.84)

#### **Recommendation 15**

That the *Commonwealth Electoral Act 1918* be amended to ensure that the return of deposit for Senate candidates is made to the person who paid the deposit. (para 2.86)

#### **Recommendation 16**

That ss177 and 180 of the *Commonwealth Electoral Act 1918* be amended to allow, up until the close of nominations, for the substitution of another candidate for a Division in a bulk nomination, where a candidate for that Division in a bulk nomination dies or withdraws their consent to act. (para 2.90)

#### **Recommendation 17**

That s331 of the *Commonwealth Electoral Act 1918* and s124 of the *Referendum (Machinery Provisions) Act 1984* be amended to reflect that only electoral advertising in journals needs to be labelled as advertising. (para 2.96)

#### **Recommendation 18**

That the *Commonwealth Electoral Act 1918* be amended so the full address clearly identifying a physical location is given for authorisation purposes. (para 2.102)

#### **Recommendation 19**

That the AEC develop an expanded authorisation regime for How To Vote cards which will:

- define How To Vote cards broadly so as to include How To Vote cards that are narrative in nature;
- ensure the authorisation details include the name of the political party of origin or the name of the independent candidate as well as the other authorisation details; and
- include a requirement for the authorisation details to be printed prominently (in 12 point) on each printed side of the How To Vote card.

---

The authorisation regime should ultimately be included in the *Commonwealth Electoral Act 1918*. (para 2.129)

**Recommendation 20**

The AEC conduct an investigation to determine the reasons for the changes in the pattern of declaration voting. (para 2.156)

**Recommendation 21**

That the AEC modify its pre-poll voting form so that voters are requested to tick off the reason why they require a pre-poll vote from a list of permitted reasons in the legislation. (para 2.158)

**Recommendation 22**

That the AEC review its current practices to ensure that the information communicated to the candidates and the public in relation to pre-polling facilities is clear and correct. (para 2.166)

**Recommendation 23**

That the AEC seek agreement, where appropriate, from the owners of the premises on which a pre-poll is located to ensure that no unreasonable restriction is placed on the right of persons to distribute the customary election material or for voters to receive that material at or in the vicinity of the pre-poll. (para 2.173)

**Recommendation 24**

That the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to process votes cast in the Antarctic as pre-poll votes. (para 2.175)

**Recommendation 25**

That section 209(5) of the *Commonwealth Electoral Act 1918* and section 25(4) of the *Referendum (Machinery Provisions) Act 1984*, requiring the production of separate postal ballot papers, be deleted so as to allow the same ballot paper to be used for all forms of voting. (para 2.178)

**Recommendation 26**

That the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to specifically allow for the replacement of spoilt, lost or undelivered postal ballot papers on written application from the elector. If the AEC receives two or more sets of ballot papers from an individual elector as a result of a request for replacement ballot papers, the AEC should discard any second or subsequent set of ballot papers received and keep a record of such occurrences to determine whether there is an intention to multiple vote. (para 2.184)

**Recommendation 27**

That paragraph 7 of Schedule 3 of the *Commonwealth Electoral Act 1918* and paragraph 7 of Schedule 4 of the *Referendum (Machinery Provisions) Act 1984* concerning the postmarking of postal vote envelopes be amended, so that the date of the witness's signature is instead used to determine if a postal vote was cast before the close of polling if there is no post mark or if the post mark is illegible. The witnessing portion of the postal vote envelope should specify all the elector's details being attested to, and should make clear that it is an offence for a witness to make a false declaration. (para 2.191)

**Recommendation 28**

That the AEC modify its postal voting form so that voters are requested to tick off the reason why they require a postal vote from a list of permitted reasons in the legislation. (para 2.200)

**Recommendation 29**

That the AEC only issue one set of postal ballot papers and discard any second or subsequent application form request except where the second or subsequent request is to replace spoilt, lost or undelivered ballot papers on written request from the elector as set out in Recommendation 26. (para 2.207)

**Recommendation 30**

That reply paid envelopes supplied by political parties with postal vote application forms that are addressed to return to the political party, the name of the political party be part of the address on the envelope. (para 2.212)

**Recommendation 31**

That the AEC review its mobile polling arrangements and training to ensure good management of mobile polling teams. (para 2.234)

**3 Election day****Recommendation 32**

That the *Commonwealth Electoral Act 1918* be amended to allow registered political parties to appeal AEC decisions on the location of polling places. (para 3.4)

**Recommendation 33**

That the AEC develop guidelines in relation to the provision of special polling facilities, and that these guidelines be a disallowable instrument. (para 3.17)

**Recommendation 34**

That the *Commonwealth Electoral Act 1918* be amended to ensure that, where a photocopied ballot paper is issued, the issuing officer must initial the ballot paper in order for it to be considered formal. (para 3.23)

**Recommendation 35**

That the *Commonwealth Electoral Act 1918* be amended to allow the AEC to send penalty, enrolment objection and determination notices to the latest known address of the voter at the time of the dispatch of the notice. (para 3.52)

**Recommendation 36**

That the *Commonwealth Electoral Act 1918* be amended to explicitly prevent scrutineers from providing assisted votes. (para 3.64)

**Recommendation 37**

That the AEC report to the Committee on options for an effective integrated educational and enrolment service for Aboriginal and Torres Strait Islanders before the next federal election. (para 3.80)

**Recommendation 38**

That the nexus between provisional voting and reinstatement be broken by deleting ss 105(4) and 105(5) of the *Commonwealth Electoral Act 1918*. (para 3.93)

**Recommendation 39**

That the *Commonwealth Electoral Act 1918* be amended so that:

- if an elector has moved within the Division they are enrolled for since the last redistribution or federal election and has not re-enrolled, then the AEC will take action to re-enrol the elector at their current residential address and their provisional vote for the Division and the Senate will be counted;
- if an elector has moved outside the Division they are enrolled for but within the same State or Territory since the last redistribution or federal election and has not re-enrolled, then the AEC will take action to re-enrol the elector at their current residential address and their provisional vote for the Senate will be counted; and

■ if an elector has moved outside the State or Territory they are enrolled for since the last redistribution or federal election and has not re-enrolled, then the AEC will take action to re-enrol the elector at their current residential address and their provisional vote will not be counted. (para 3.96)

**Recommendation 40**

That the AEC review its procedures for updating the Commonwealth Electoral Roll following notification of the death of an elector. (para 3.135)

**4 After the close of poll**

**Recommendation 41**

That the *Commonwealth Electoral Act 1918* be amended to allow Divisional Returning Officers some discretion as to the location for the declaration of the poll. All candidates should be consulted prior to the selection of the location. (para 4.17)

**Recommendation 42**

That the AEC conduct targeted public education programs prior to the next federal election, to more fully explain the full preferential voting system for the House of Representatives. (para 4.40)

**Recommendation 43**

That section 216 of the *Commonwealth Electoral Act 1918* be amended so that group voting ticket information can be provided in booklet format rather than in poster format. (para 4.68)

**5 Other issues**

**Recommendation 44**

That the disclosable sum received from a person or organisation during a financial year be increased from \$1,500 to \$3,000. (para 5.20)

**Recommendation 45**

That the minimum donation before a donor is required to lodge a return be increased from \$1,500 to \$3,000. (para 5.25)

**Recommendation 46**

That the AEC conduct a feasibility study on moving to a system of electronic lodgement of annual disclosure returns. (para 5.30)



**Recommendation 47**

That the AEC ensure that technical or minor mistakes are not brought within the provision of s315(2) of the *Commonwealth Electoral Act 1918*. (para 5.33)

**Recommendation 48**

That section 311A of the *Commonwealth Electoral Act 1918*, concerning annual returns by Commonwealth departments, be deleted and inserted in the Joint Committee of Public Accounts and Audit guidelines for the production of annual reports. (para 5.36)

**Recommendation 49**

That eligibility for federal registration by a political party requires that political parties must have either 500 members as defined under section 123(3) of the *Commonwealth Electoral Act 1918* or have at least one member who is a member of the federal parliament. (para 5.56)

**Recommendation 50**

That the definition of a member of a political party at section 123(3) of the *Commonwealth Electoral Act 1918* be expanded to include the requirements that a person must:

- have been formally accepted as a member according to the party's rules;
- remain a valid member under party rules;
- not be a member of more than one registered political party unless the parties themselves have sanctioned it; and
- have paid an annual membership fee. (para 5.57)

**Recommendation 51**

That a fee of \$5000 be required to accompany an application for the registration of a political party and \$500 for an application to change either the registered name or abbreviation of a political party. (para 5.65)

**Recommendation 52**

That the AEC investigate and report on the effectiveness of the current criteria for the registration of party names and how the AEC might improve the criteria for the registration of party names to disallow inappropriate and unrepresentative names being registered. (para 5.69)

**Recommendation 53**

That the registered abbreviation of a political party be restricted to either an acronym, or a shortened version, of the party's registered name and it should be no longer overall than the registered party name. (para 5.72)

**Recommendation 54**

That the AEC be authorised to conduct reviews of the continuing eligibility of registered political parties after every federal election. The AEC should be able to require parties to produce documentation in support of their application for registration and their continued right to remain registered. The standard of documentation and the verification undertaken by the AEC can be the same as if the party were first applying to register. The AEC should also have the power to deregister a political party if it fails to produce the documentation requested by the AEC in support of its continuing right to remain registered. (para 5.80)

**Recommendation 55**

That given adequate public support, a referendum be held to amend the constitution so that the act of nomination by a candidate for the House of Representatives or Senate be recognised as immediately extinguishing any allegiance to a foreign country provided the candidate is also an Australian citizen. (para 5.96)

**Recommendation 56**

That in section 354 and 383 of the *Commonwealth Electoral Act 1918* and section 139 of the *Referendum (Machinery Provisions) Act 1984*, "Federal Court of Australia" be substituted for the "Supreme Court of the State or Territory." (para 5.114)

**Recommendation 57**

That section 382 of the *Commonwealth Electoral Act 1918* be deleted. (para 5.117)

**Recommendation 58**

That as part of its public education program prior to the next federal election the AEC target as an education priority the process and outcomes of the redistribution of electoral boundaries in those electorates where a redistribution has occurred since the previous federal election. (para 5.124)

**Recommendation 59**

To amend section 28 of the Constitution to increase the House of Representatives term from three years to four years. (para 5.129)



# Executive summary

## Chapter 1 – Introduction

Chapter 1 provides background information on the 1998 federal election and outlines the scope and conduct of the inquiry and the structure of the report.

## Chapter 2 – Pre-election

Issues relating to the period before election day are covered in this chapter. These include: AEC staffing; public awareness of the election; enrolment; nomination; political campaigning; declaration voting; and mobile polling.

Between the 1996 and 1998 federal elections, continuous roll updating and an address based roll management system were introduced by the Australian Electoral Commission (AEC) to improve the accuracy of the Commonwealth Electoral Roll. In order to continue the process of improving the accuracy of the Roll, the Committee recommends a change to the close of rolls for an election to the day of the issuing of the writs for new electors, and for those already enrolled, the third day after the issue of writs. In addition, the Committee recommends amendments to the *Commonwealth Electoral Act 1918* to base enrolment on address and to amend the process of re enrolment for voters who have been removed from the Commonwealth Electoral Roll on the basis that they no longer live at their enrolled address. These changes will enhance the utility of the address based roll management system.

The Committee is interested in providing the public with access to the most up to date version of the Commonwealth Electoral Roll while still preserving the security of the Roll. As such, the Committee recommends that the Roll be made available over the internet and on CD-Rom.

The death of the Australian Democrats' candidate for the Division of Newcastle before the 1998 federal election highlighted a number of deficiencies in those sections of the *Commonwealth Electoral Act 1918* dealing with the death or withdrawal of a candidate prior to the declaration of nominations. As a result, the Committee recommends an amendment to allow the substitution of a candidate in a bulk nomination who withdraws or dies up to the close of nominations.

The authorisation requirements for second preference How To Vote cards has been a matter of concern in previous election inquiries. The Committee recommends an improvement in the authorisation requirements for all How To Vote cards to ensure that voters are informed as to the origin of How To Vote cards. The Committee also recommends that the definition of authorisation for political advertising purposes be specified in the *Commonwealth Electoral Act 1918*.

The numbers of declaration votes (postal, pre-poll, absent and provisional votes) cast during federal elections has increased from 12.74% of votes in the 1993 to 17.90% of votes in the 1998 federal election. The Committee recommends that the AEC undertake an investigation to determine the reasons for the changing pattern in declaration voting. In addition, the Committee recommends that, when completing the declaration certificate, voters be requested to tick off the reasons why they require a pre-poll and postal vote.

The Committee recommends a series of improvements to the processing of postal vote application forms to overcome the potential for multiple voting and to ensure that when a reply paid envelope addressed to a political party is provided with a postal vote application, it is clear to the applicant that the form will be returned to a political party.

The Committee also investigates the administration of remote mobile polling by the AEC following a range of complaints about the administration of remote mobile polling in the Northern Territory and in the Divisions of Grey in South Australia. As a result of this investigation, the Committee recommends that the AEC review its mobile polling arrangements and training to ensure good management of mobile polls.

## **Chapter 3 – Election day**

The issues arising from the events of election day are discussed in this chapter. Matters addressed include: the administration of polling booths; assisted and provisional voting; and fraudulent enrolment and voting.

The administration of the 7,775 polling booths by the AEC was generally very good. However, the Committee does investigate the planning and administration of one polling booth in Alice Springs. The Committee also addresses a number of other concerns about other polling booths.

Up to 90% of votes in some Northern Territory polling booths are assisted. In order to reduce this level of assisted voting, the Committee recommends that the AEC report to the Committee on an integrated educational and enrolment service for Aboriginal and Torres Strait Islanders before the next federal election.

The administration of provisional voting has become increasingly complex and inefficient to the extent of reducing the integrity of the Commonwealth Electoral Roll. The Committee recommends a series of amendments to improve the provisional voting process.

The Committee has not detected any evidence of widespread or organised electoral fraud during the 1998 federal election. However, the Committee is very concerned that the majority of suspected cases of multiple voting are not investigated by the Australian Federal Police.

The Committee also recommends the AEC review its procedures for updating the Commonwealth Electoral Roll following notification of the death of an elector.

## **Chapter 4 – After the close of polls**

Chapter 4 discusses the process of the count and alternative voting systems to the current electoral system.

A significant number of submissions to the inquiry express support for an optional preferential voting system. It is clear to the Committee from these submissions that a substantial number of voters misunderstand the full preferential voting system. The Committee recommends the AEC conduct targeted public education campaigns to explain the full preferential voting system in order to remedy this misunderstanding.

The Committee also discusses a number of alternative voting systems suggested in submissions. These include: the first past the post system; the primary vote quota

system for the Senate; the random/rotation system; the weighted preferential system and electronic voting.

## **Chapter 5 – Other issues**

A number of election related issues are discussed in chapter 5. These include: political party funding and disclosure; registration of political parties; section 44 of the Constitution; electoral litigation; redistributions; four year terms; the Australian National Audit Office audit of the AEC; and the process of election review.

The Committee recommends a streamlining of the financial disclosure requirements, including: an increase in the minimum donation from an individual or organisation to a political party in a financial year requiring disclosure by the political party to \$3,000; and an increase in the minimum donation from an individual or organisation to a political party in a financial year requiring disclosure by the donor to \$3,000. The Committee also recommends that the AEC investigate the feasibility of political parties lodging financial returns in an electronic form.

The Committee wishes to ensure that new political parties seeking registration are in fact legitimate political parties. To this end, the Committee recommends a series of improvements in the regulation of registered political parties, including: creating a definition of a member of a political party for the purposes of registration; increasing the fee for registration of a political party to cover the costs of registration; and empowering the AEC to conduct regular reviews of the eligibility of political parties to remain registered.

Constitutional limitations on candidate nomination resulted in the Court of Disputed Returns ruling that a Queensland Senator-Elect was not capable of being elected because of the application of section 44(i) of the Constitution. In order to overcome the difficulties presented by section 44(i), the Committee recommends that a referendum be held to amend the Constitution so that the act of nomination for the House of Representatives or Senate be recognised as immediately extinguishing any allegiance to a foreign power. The Committee also discusses a number of other Court of Disputed Returns cases that resulted from the 1998 federal election.

The Committee supports the introduction of four year terms for the parliament, recommending an amendment to the Constitution so that the parliamentary term for members of the House of Representatives is increased to four years.

This chapter concludes with a discussion about issues surrounding election litigation, redistributions, the process of election review and an Australian National Audit Office performance audit of the AEC.





## Introduction

- 1.1 Australia is one of the few countries in the world in which its citizens are compelled to attend polling places at national elections. Facilitating voting by such a large proportion of the population at regular intervals has meant that Australia's electoral system has become efficient and effective in the conduct of elections. Our electoral system is at the forefront internationally, keeping pace with the latest technology and leading the way in innovative methods to facilitate all aspects of conducting elections. The Australian Electoral Commission (AEC) is regularly invited to other countries to provide advice and representatives from other countries often come to Australia during an election to observe and learn our techniques. Our electoral system is an asset and one which makes a valuable contribution to the democratic society in which we live.

### The 1998 Federal Election

- 1.2 The 1998 federal election was announced on Sunday 30 August 1998 and the writs were issued for a House of Representatives election and a half-Senate election the following day. The electoral rolls closed seven days later on 7 September 1998 with the AEC having processed 351,913 enrolment forms during this period. Of these, there were 64,014 new enrolments, bringing the total number of electors on the roll to 12,056,625, an increase of 401,435 persons or 3.4% over the enrolment for the 1996 federal election.<sup>1</sup>
- 1.3 Nominations for election closed on 10 September 1998. Nationally, 1,438 people nominated as candidates in the 1998 federal election. Of these, 1,109 candidates nominated for the House of Representatives and 329

---

1 Submissions p S345 (AEC)

candidates nominated for the Senate. There were 1,039 male candidates and 399 female candidates.<sup>2</sup>

- 1.4 Polling day was Saturday 3 October 1998. While the large majority of voters cast ordinary votes on polling day at one of the 7,775 polling booths, over the last three elections there has been an increasing pattern of declaration voting.<sup>3</sup> This pattern can be seen in the following table.

Table 1.1 Declaration vote statistics

	1993 federal election	1996 federal election	1998 federal election
<b>Declaration Votes</b>	1,360,320 (12.74%)	1,557,075 (13.78%)	2,074,065 (17.90%)
<b>Ordinary Votes</b>	9,314,485 (87.26%)	9,737,404 (86.22%)	9,513,288 (82.10%)
<b>Total Votes</b>	10,674,805 (100%)	11,294,479 (100%)	11,587,353 (100%)

Source AEC submission, p S392

- 1.5 Voter turnout for the 1998 federal election was 95.34% for the Senate and 94.99% for the House of Representative, continuing a pattern of turnout above 90% that has continued since compulsory voting was introduced in 1924.<sup>4</sup> Table 1.2 indicates the percentage turnout since the 1987 federal election.

Table 1.2 Voter turnout at federal elections

Voter Turnout	1987	1990	1993	1996	1998
	%	%	%	%	%
House of Representatives	93.84	95.32	95.75	95.77	94.99
Senate	94.34	95.81	96.22	96.20	95.34

Source Australian Electoral Commission. 1999. *Electoral Pocket Book*, Canberra, AEC, p 40

- 1.6 The informal vote for the 1998 federal election increased in the House of Representatives to 3.8% but dropped in the Senate to 3.2%.<sup>5</sup> The following table shows the pattern of informal voting at recent federal elections.

2 Submissions p S359 (AEC)

3 Declaration voting is an alternative form of voting to casting an ordinary vote at a polling booth on election day. Methods of declaration voting include pre-poll voting, postal voting, absent voting and provisional voting. Declaration voting is dealt with in Chapter 2 of this report.

4 Submissions p S379 (AEC)

5 Australian Electoral Commission. 1999. *Electoral Pocket Book*, Canberra, AEC, p 45.

Table 1.3 Informal voting at federal elections

Informal Vote	1987	1990	1993	1996	1998
	%	%	%	%	%
House of Representatives	4.9	3.2	3.0	3.2	3.8
Senate	4.0	3.4	2.6	3.5	3.2

Source Australian Electoral Commission. 1999. *Electoral Pocket Book*, Canberra, AEC, p 45

1.7 The 1998 federal election resulted in the Coalition being returned to government with a 12 seat majority in the House of Representatives. The following two tables outline the results of the election in both the House of Representatives and the Senate.

Table 1.4 1998 House of Representatives results

Party	Seats Won	Proportion of First Preference Vote
		%
Australian Labor Party	67	40.1
Liberal Party	64	33.9
National Party	16	5.3
Country Liberal Party	-	0.3
Australian Democrats	-	5.1
Pauline Hanson's One Nation	-	8.4
Other	1	6.8

Source Australian Electoral Commission. 1999. *Electoral Pocket Book*, Canberra, AEC, p 71

Table 1.5 1998 Senate results

Party	Seats Won								Total
	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	
Australian Labor Party	3	3	2	2	2	3	1	1	17
Liberal Party	2	2	2	3	3	2	1	-	15
National Party	-	1	-	-	-	-	-	-	1
Country Liberal Party	-	-	-	-	-	-	-	1	1
Australian Democrats	1	-	1	1	1	-	-	-	4
Greens	-	-	-	-	-	-	-	-	-
Pauline Hanson's One Nation	-	-	1	-	-	-	-	-	1
Tasmanian Independent Senator Brian Harradine Group	-	-	-	-	-	1	-	-	1

Source Australian Electoral Commission. 1999. *Electoral Pocket Book*, Canberra, AEC, p 71

1.8 Following the election, the eight election writs for each of the States and Territories for the House of Representatives and the Senate were returned

to the Governor-General by 29 October 1998.<sup>6</sup> The 39<sup>th</sup> Parliament met for the first time on 10 December 1998. The latest time by which the next combined House of Representatives and half-Senate federal election can be held is 12 January 2002.

- 1.9 Expenditure on the 1998 federal election, as at 15 June 1999, was \$61,737,070 plus \$33,920,787 for public funding of political parties and candidates.<sup>7</sup> The average cost per elector was \$5.06, excluding public funding.<sup>8</sup> The comparative costs against previous elections are outlined in the following table.

Table 1.6 Comparative costs of expenditure on elections

	1984	1987	1990	1993	1996	1998
	\$	\$	\$	\$	\$	\$
<b>Average cost per elector (excluding public funding)</b>						
Actual Cost	3.13	3.75	4.02	4.11	5.08	5.06
Constant Prices (Dec 1984 Base)	3.13	3.05	2.68	2.54	2.87	2.80
Constant Prices (Mar 1998 Base)	5.65	5.51	4.84	4.58	5.18	5.06
<b>Actual cost (including public funding payments)</b>						
	38,430,000	48,875,900	55,478,000	64,049,500	91,407,000	95,657,857

Source Australian Electoral Commission. 1999. *Electoral Pocket Book*, Canberra, AEC, p 62

## Scope and conduct of the inquiry

- 1.10 On 10 December 1998 the Special Minister of State, Senator the Hon Chris Ellison, wrote to the Joint Standing Committee on Electoral Matters (JSCEM) asking it to inquire into and report on “all aspects of the conduct of the 1998 Federal election and matters related thereto.” The inquiry was advertised in all major newspapers on 23 January 1999 and members of the public were invited to make submissions. In addition, letters were sent to individuals and organisations with a particular interest in the electoral process, and the JSCEM Chairman wrote to all Senators and Members inviting them to make submissions. The internet site was also used as a method of inviting the public to make submissions to the inquiry. Throughout the inquiry process the Committee has actively

6 Submissions p S325 (AEC)

7 Australian Electoral Commission. 1999. *Electoral Pocket Book*, Canberra, AEC, p 63.

8 Submissions p S437 (AEC)

sought to keep the public informed of its work and continued to involve the community in its investigative processes.

- 1.11 The JSCEM received 261 submissions to this inquiry from a variety of individuals and organisations, including the AEC, special interest groups, members of parliament and political organisations. The submissions are listed at Appendix A. In addition, a large number of submissions were received in the style of letters, primarily from individuals focusing on the election result as it related to the vote for One Nation candidates. A list of these letters is at Appendix B. The five sets of documents listed at Appendix C were accepted as exhibits. The Committee also held 12 public hearings, including one in Darwin, Alice Springs and Brisbane and inspections in Maningrida, Bathurst Island and Alice Springs from March through to October 1999. A list of the hearings and the witnesses heard is at Appendix D. In selecting its witnesses and locations for hearings, the Committee sought to expand the basis of information received through submissions. Accordingly, the Committee did not travel to all parts of the country to take verbal evidence.
- 1.12 The submissions and transcripts of evidence from the public hearings have been incorporated into separate volumes. Copies of these documents are available for inspection at the Committee secretariat, the Commonwealth Parliamentary Library, the National Library of Australia and the State Libraries. All transcripts of evidence are also available on the internet.
- 1.13 The JSCEM, and its predecessor the Joint Select Committee on Electoral Reform, have inquired into the conduct of all federal elections since the 1983 federal election. In the words of the AEC, the JSCEM provides:
- ... a democratic forum at the highest level for citizens to voice their concerns about the electoral process and the conduct of elections; provides an important political forum for parliamentary representatives to find agreement in order to avoid deadlocks in the legislative process; and stands as a model of transparency and accountability on the international stage.<sup>9</sup>
- 1.14 Since 1983, the JSCEM has recommended various amendments to both the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* as a result of its inquiries into federal elections. Many of those amendments have been enacted by the parliament.
- 1.15 As a result of this inquiry into the 1998 federal election, the JSCEM is able to support the AEC's conclusion that overall:

---

9 Submissions p S325 (AEC)

... from an administrative and operational viewpoint, ... the 1998 federal election was successfully conducted, to the overall satisfaction of the major stakeholders.<sup>10</sup>

- 1.16 The Committee acknowledges the professionalism and work of the AEC in the administration and smooth running of the 1998 federal election. Conducting an election successfully and being able to declare a result by 8pm EST is no small task. As the Electoral Commissioner said after polling day on 3 October 1998:

Conducting a federal election is one of the largest peace-time activities that any nation undertakes. Between late August and early October we mobilised some 12 million voters who attended nearly 8,000 polling places. In a country as geographically large and diverse as Australia this was a considerable achievement of which we can all be proud. The fact that most citizens participated in the democratic process without incident or inconvenience is a tribute to the professionalism and dedication of AEC officers.<sup>11</sup>

- 1.17 The JSCEM has, however, identified several areas where improvements can be made to the electoral process. The JSCEM has made 59 recommendations to further improve various aspects of the conduct of federal elections. Areas such as the registration of political parties, assisted voting and improved education campaigns have been highlighted by the Committee to be refined or changed to make the administration and running of federal elections better and more efficient. A list of these recommendations can be found at pp *xvii-xxvi* of this report.
- 1.18 The Committee recognises that continuous reform of the federal electoral system is necessary if Australia's electoral system is to remain at the forefront internationally. The Committee is committed to the continued holding of inquiries after each federal election. Such inquiries help ensure that the electoral legislation remains relevant in its application to contemporary circumstances, keeps pace with the latest technology and best facilitates the conduct of democratic federal elections in Australia.

## Structure of the report

- 1.19 This report is structured chronologically in relation to the significant issues which have occurred or been raised in relation to the 1998 federal election. Chapter 2 examines the events of those weeks leading up to

---

10 Submissions p S323 (AEC)

11 Australian Electoral Commission. *Scrutiny, No 41*, October 1998.

election day; Chapter 3 looks at election day issues; Chapter 4 discusses the process involved in conducting the election count after the close of polls and also examines alternative voting systems to full preferential voting; and Chapter 5 deals with many other issues relevant to the 1998 federal election encountered during the inquiry.





## Pre-election

### Selection of AEC staff

- 2.1 The Australian Electoral Commission (AEC) requires a significant number of staff to conduct a federal election. Prior to the 1998 federal election the AEC employed 60,000 temporary staff for that purpose. After an election is called, each Divisional Returning Officer (DRO) is responsible for the employment of the required number of staff in their Division.<sup>1</sup>
- 2.2 Clearly, it is in the interests of not only the AEC, but the general public, to have impartial staff to conduct the election. Accordingly, over the last few elections, the AEC has developed a training scheme for the large number of required temporary staff.<sup>2</sup> The AEC has a set of procedures in employing temporary staff that are intended to eliminate those with bias. All temporary staff employed by the AEC to conduct the election are first required to submit an official application which contains the standard AEC statement about political affiliations. Potential staff are then interviewed to assess their skills and qualifications, which may include familiarity with the Division and an ability to speak a second language common in the Division. Finally, they must sign an Acceptance of Offer and Undertaking, which includes statements requiring that they not engage in political activity or electoral affairs while employed by the AEC,

---

1 Australian Electoral Commission. 1999. *Behind The Scenes: The Australian Electoral Commissions' 1998 Federal Election Report*. Canberra, Paragon Printing, p 18.

2 Australian Electoral Commission. 1999. *Behind The Scenes: The Australian Electoral Commissions' 1998 Federal Election Report*. Canberra, Paragon Printing, p 18.

and statements concerning the disclosure of official information, and behaviour in the polling place.<sup>3</sup>

2.3 During the conduct of the inquiry the Committee received two submissions complaining about the potential bias of some temporary staff.

2.4 The Northern Territory Country Liberal Party (NTCLP) alleges that temporary staff employed by the AEC at some polling booths, particularly at the Tangentyere Council and some Central Australian mobile booths, were biased. The NTCLP is concerned that the AEC, while not employing members of political parties, does employ persons belonging to an “active Aboriginal organisation.”<sup>4</sup> The NTCLP asserts that:

...These persons cannot be seen as unbiased and they made no attempt to hide their distaste for the CLP policies, candidates and volunteers.<sup>5</sup>

2.5 Mike Bowden, Community Development Officer for the Tangentyere Council does not believe that recruiting persons who are employees of an Aboriginal organisation should be a cause for concern:

...Aboriginal organisations are political, but they should not be excluded from the process because they do have political views.<sup>6</sup>

2.6 The Council believes that being employed in such an organisation does not necessarily imply bias on the part of AEC temporary staff. In many instances, staff of Aboriginal organisations do not have a decision making role in the organisation and may not actually hold the same views as those running the organisation.<sup>7</sup>

2.7 The AEC supports this view, arguing that:

...the suggestion that persons employed by the Tangentyere Council should not have been employed by the AEC as polling officials, because the Council may have disagreed with the Northern Territory Government on some issues, is similar to saying, for example, that the AEC should not have employed teachers as polling officials because they were members of the Australian Education Union (NT Branch), which had been in dispute with the Northern Territory Government...<sup>8</sup>

---

3 Submissions p S1158 (AEC)

4 Submissions p S548 (NTCLP)

5 Submissions p S549 (NTCLP)

6 Transcript p 276 (Tangentyere Council)

7 Transcript p 277 (Tangentyere Council)

8 Submissions p S1158 (AEC)

- 2.8 On the whole, the AEC has understandable reasons for employing staff of Aboriginal organisations. These staff bring an understanding of the culture and language of the Aboriginal community, and the AEC believes this has a positive impact on the participation rate.<sup>9</sup> These benefits need to be taken into consideration when dealing with potential bias.
- 2.9 On a related issue, the Liberal Party of Australia expresses some concern about members of unions affiliated with political parties being employed as temporary staff by the AEC. The Liberal Party recommends that, in order to ensure that AEC temporary staff are completely impartial, the AEC should be compelled not to employ people who are members of industrial organisations that are affiliated with political parties.<sup>10</sup>
- 2.10 In response to this Liberal Party recommendation, the AEC states that preventing members of unions being employed as temporary staff:
- ... would severely undermine the operational capacity of the AEC, particularly on polling day, and in the absence of any evidence that the political neutrality of the AEC has been compromised by unionised staff, would appear to be an unnecessary and burdensome restriction...<sup>11</sup>
- 2.11 The Committee affirms its support for AEC staff to perform their duties without bias.

### **Recommendation 1**

- 2.12 **That the AEC assess the effectiveness of its staff selection procedures to ensure that it continues as an independent, professional and ethical organisation that is respected by the people who use its services.**

---

9 Submissions p S1158 (AEC)

10 Submissions p S778 and Transcript pp 171-172 (Liberal Party)

11 Submissions p S1188 (AEC)

## Other elections on polling day

- 2.13 The 1996 federal election coincided with ATSIC by-elections and a state election in Tasmania, and the next federal election may coincide with the ACT election due in October 2001. The Australian Labor Party (ALP) wishes to ensure that, when federal elections coincide with elections at other levels of government, polling is not compromised either by the AEC's obligations to conduct other elections or by confusion on the part of State or Territory electoral officials as to the application of federal electoral laws.<sup>12</sup> In response, the AEC indicates that it successfully conducted the coinciding elections in 1996.<sup>13</sup> The Committee believes that the AEC should ensure that its prime functions are not impeded by other activities and other elections.

### Recommendation 2

- 2.14 **That the AEC devise a procedure for ensuring that polling for federal elections is not compromised in any way by the AEC's obligations to conduct other elections, and that the AEC ensure that there is appropriate liaison between it and State and Territory electoral offices concerning the conduct of overlapping elections, including ensuring that State and Territory officials receive appropriate training and information on the requirements of federal electoral legislation.**

## Public awareness of the election

- 2.15 During the 1998 federal election the AEC undertook an extensive public awareness campaign. The major components of the campaign were a national advertising and public relations campaign, a national telephone inquiry service, and a major public information program including printed materials and an enhanced AEC web site. The total cost of the public awareness campaign is estimated to be \$11.6 million.<sup>14</sup>
- 2.16 A significant aspect of the 1998 election was that it was held on a long weekend with school holidays in most States and Territories. This meant that there were a lot of cultural and sporting events on at the time

---

12 Submissions pp S788-S789 (ALP)

13 Submissions p S1199 (AEC)

14 Submissions p S337 (AEC)

requiring special arrangements and facilities. In the majority of cases these special arrangements involved encouraging voters to vote before going to the event.<sup>15</sup> Concerns raised about special polling arrangements are dealt with at paragraphs 3.15-3.16.

- 2.17 A telephone inquiry service was first introduced by the AEC during the 1996 federal election. This service was reintroduced and heavily promoted during the 1998 federal election. The inquiry service operated seven days a week for the period of the campaign. The service responded to 533,451 calls during the election period compared to 317,799 calls at the 1996 election. While the AEC was able to answer more calls, it reports that the level of demand also increased resulting in 610,171 unanswered calls in 1998. Telstra has advised the AEC that a significant number of the unanswered calls were probably successful on a second or third attempt.<sup>16</sup> Telstra also advised that more than 7,000 call operators would have been required to handle the unanswered calls during peak periods. The logistics of establishing such a service are likely to prove prohibitive, so the AEC is investigating alternative ways of promoting the service at future elections.<sup>17</sup>
- 2.18 The AEC internet site was comprehensively reviewed and enhanced prior to the election. One of the additions was an on-line results facility called the 'Virtual Tally Room,' which provided access to polling results on election night and beyond. On election night approximately 85,000 people visited the Virtual Tally Room, increasing to two million in the week after polling day. This is considered a very high level of usage for a government web site.<sup>18</sup> The Committee is particularly supportive of this service, which it considers was very informative.
- 2.19 A small number of difficulties were experienced by the AEC in advertising particular polling places.<sup>19</sup> The concerns of Mr Barry Wakelin MP, Member for Grey, in relation to the Risdon Park South polling place are a good example.<sup>20</sup> There was a mistake in the advertised address of the polling place which the AEC states it made every attempt to rectify. As soon as the mistake was identified, the AEC placed advertisements with the local ABC radio station. However, the local television station had a short copy deadline and would not take the corrected advertisement. A

---

15 Submissions p S337 (AEC)

16 Transcript p 440 (AEC)

17 Submissions pp S342-S343 (AEC)

18 Submissions p S343 (AEC)

19 Submissions p S1176 (AEC)

20 Submissions p S725 (B.Wakelin MP, Member for Grey)

sign directing people to the new polling place was placed at the advertised premises on polling day.<sup>21</sup>

- 2.20 Despite the aforementioned public awareness campaign it has become obvious to the Committee during this inquiry that there is a high level of misunderstanding about some areas of the electoral process. The Committee has recommended later in this report that particular areas be targeted by the AEC in future public education campaigns. (See Recommendations 37 and 58)

## Enrolment

- 2.21 The rolls for the 1998 federal election closed on Monday 7 September 1998. Between the issue of the writs and the close of rolls, the AEC received a total of 351,913 enrolment forms. Processing of these forms was completed by 9 September 1998.<sup>22</sup> In processing these forms the AEC admits that:

There was checking done within the system that it is a legitimate address, but in that close of Roll period there is no field checking done.<sup>23</sup>

- 2.22 The forms included new enrolments, re-enrolments and transfers of enrolments. 7,714 electors were deleted from the Commonwealth Electoral Roll (the Roll) during this period due to death, duplicate records or objection action.<sup>24</sup>
- 2.23 The greatest catalyst for enrolment is an electoral event. Between 1996 and 1998 there were three national electoral events: the 1996 and 1998 federal elections, and the constitutional convention election, with associated publicity campaigns. This resulted in a lower level of enrolment transaction during the 1998 federal election (351,913)<sup>25</sup> compared with 431,694 for the 1996 federal election.<sup>26</sup>
- 2.24 The Committee is concerned about the potential inaccuracies in the Roll caused by the large number of late enrolments received between the issue

---

21 Submissions p S1177 (AEC)

22 Submissions p S345 (AEC)

23 Transcript p 440 (AEC)

24 Submissions p S345 (AEC)

25 Transcript p 44 (AEC)

26 Joint Standing Committee on Electoral Matters. 1997. *The Federal Election: Report of the Inquiry into the conduct of the 1996 Federal Election and matters related thereto*. Canberra, AGPS, p 1.

of the writs and the close of rolls which are not able to be fully checked by the AEC. As part of the 1996 federal election inquiry report, the Committee recommended that the rolls for an election close to new electors on the date of the issue of the writs, and for existing electors three days after the issue of the writs.<sup>27</sup> In response, the government proposed an amendment to the *Commonwealth Electoral Act 1918* (Electoral Act) in the *Electoral and Referendum Amendment Act 1998* to make the close of the Roll three working days after the issue of the writ. This amendment was rejected during the Act's passage through the Senate. Differences of opinion within the Committee remain.

- 2.25 To preserve the integrity of the Roll, the majority of the Committee reiterates the recommendation of the 1996 federal election inquiry report.

### Recommendation 3

- 2.26 **That section 155 of the *Commonwealth Electoral Act 1918* be amended to provide that for new enrolments, the rolls for an election close on the day the writ is issued, and for existing electors updating address details, the rolls for an election close at 6.00pm on the third day after the issue of the writ.**
- 2.27 At the close of rolls there were 12,056,625 electors enrolled to vote, an increase of 401,435 electors, or 3.4%, on the 1996 federal election.<sup>28</sup> The following table breaks down these enrolment figures by state and territory.

Table 2.1 Electors enrolled by State/Territory as at 7 September 1998

State/Territory	number of electors
NSW	4,031,749
VIC	3,056,887
QLD	2,177,556
WA	1,140,845
SA	1,006,398
TAS	329,751
ACT	208,684
NT	104,755
<b>National Total</b>	<b>12,056,625</b>

Source AEC submission, p S345

27 Joint Standing Committee on Electoral Matters. 1997. *The Federal Election: Report of the Inquiry into the conduct of the 1996 Federal Election and matters related thereto*. Canberra, AGPS, p 14.

28 Submissions p S345 (AEC)

- 2.28 The AEC recommends a minor technical change to the enrolment provisions for overseas voters to correct a current anomaly. Under s94A of the Electoral Act, an elector who enrolls overseas is eligible to do so for up to two years after they have left Australia. However, under s94 of the Electoral Act, if an elector is enrolled when they leave Australia, they have only a year to apply as an overseas elector. The AEC recommends that the period in which an overseas elector is entitled to enrol be standardised to two years.<sup>29</sup> The Committee accepts this recommendation.

#### **Recommendation 4**

- 2.29 **That the time period for enrolling as an overseas elector be a uniform two years from the date of departure from Australia, regardless of whether the elector was previously enrolled in Australia.**
- 2.30 On a related issue, an overseas elector, Ms Ann Fiske, made a submission to the inquiry indicating the difficulty experienced by Australian citizens overseas wishing to cast a postal vote.<sup>30</sup> The difficulty is mainly in relation to obtaining an authorised witness for the purposes of completing the declaration certificate. The number of people able to witness the declaration certificate in another country is necessarily limited. Thus, Australian citizens who wish to cast a postal vote, particularly in a non-commonwealth country or away from a capital city, can be disenfranchised. The AEC has evidence from the 1998 federal election of a number of overseas electors who were unable to find anyone qualified to be a witness and therefore were unable to vote in the election.<sup>31</sup>
- 2.31 To overcome this problem, the AEC recommends an amendment that enables overseas voters to both enrol and make a postal vote from outside Australia by attaching a photocopy of their passport to confirm their personal details to the relevant form as an alternative to obtaining a witness' signature.<sup>32</sup> The Committee agrees with the solution proposed by the AEC on the basis that the declaration certificate remain the method of first choice. In order to increase the security of the proposed process, the Committee recommends that the photocopy of the passport be signed by the applicant.

---

29 Submissions p S353 (AEC)

30 Submissions p S1536 (A.Fiske)

31 Submissions p S1671 (AEC)

32 Submissions p S1672 (AEC)



## Recommendation 5

- 2.32 That the relevant sections of the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to allow overseas electors to use a photocopy of their passport certified by the elector to confirm their personal details in circumstances where it is not possible to obtain an authorised witness' signature when either enrolling as an overseas elector or making a postal vote from overseas.

## Accuracy of the Commonwealth Electoral Roll

- 2.33 The accuracy of the Commonwealth Electoral Roll is paramount to the integrity of the electoral process:

It is essential that the Roll is always accurate and that the integrity of the Roll is maintained at the highest possible standards... to ensure that all elections and by-elections are conducted on rolls that are of the highest quality...<sup>33</sup>

- 2.34 Two parliamentarians made submissions dealing with the accuracy of the Commonwealth Electoral Roll.<sup>34</sup> The AEC also discusses the accuracy of the Roll at some length, pointing out the advances made since the 1996 federal election inquiry in ensuring the accuracy of the Roll.<sup>35</sup>
- 2.35 Recommendations for changing the procedures by which a person enrolls were made in the 1996 federal election inquiry report.<sup>36</sup> Although not proclaimed yet, they have been given effect by the *Electoral and Referendum Amendment Act (No. 1) 1999*, which proposes to amend the procedure for enrolment by determining that an enrolment form must be witnessed by a prescribed class of electors determined by regulation, and that the identity of the person enrolling must be verified by the production of some form of identification.<sup>37</sup>

---

33 Submissions p S1288 (G.Smith)

34 Submissions pp S685 (J.Lloyd MP, Member for Robertson) and S84 (Senator the Hon M.Reid)

35 Submissions pp S346-S349 (AEC)

36 Joint Standing Committee on Electoral Matters. 1997. *The Federal Election: Report of the Inquiry into the conduct of the 1996 Federal Election and matters related thereto*. Canberra, AGPS, pp 7-9.

37 *Electoral and Referendum Amendment Act (No.1) 1999*. Schedule 1, ss11 and 12

**Recommendation 6**

**2.36 That the AEC investigate and report on the potential impact of the proposed changes to the witnessing and enrolment provisions effected by *Electoral and Referendum Act (No. 1) 1999*. This report should include information on:**

- **The potential financial impact of these changes on new enrollees;**
- **The potential impact on enrolment numbers; and**
- **The potential cost to the AEC of setting up and administering these new systems.**

**Where the changes have been implemented, the AEC should provide details of studies it has done on the potential impacts and the actual impacts.**

2.37 One method used by parliamentarians to gauge the accuracy of the Commonwealth Electoral Roll has been return to sender mail. As part of the 1996 federal election inquiry, the AEC emphasised how important it was for parliamentarians to use the most up to date version of the Roll to minimise inaccuracies.<sup>38</sup>

2.38 The Roll changes continuously right up until the close of rolls for an election. A habitation check is conducted in the months before the election, but this does not produce a final static document.<sup>39</sup> Even after the close of rolls, the AEC continues to receive notifications of change of address. In the ACT for example, the 1997/98 average for changes of enrolments was 900 a week, which meant that even the most up to date rolls would result in some returned mail.<sup>40</sup>

2.39 Senator the Hon. Margaret Reid, Senator for the ACT, expresses concern about the accuracy of the Roll. Following a mail out to the ACT electorate just days after the close of the Roll, a large number of return to sender letters were delivered to her office.<sup>41</sup>

2.40 Clearly, in the case of Senator Reid's mail out, the volume of return mail would depend on the accuracy of the Roll used. The AEC claims that 5,000 enrolment transfers were processed in the ACT during the close of

---

38 Submissions p S1134 (AEC)

39 Submissions p S1179 (AEC)

40 Submissions p S1135 (AEC)

41 Submissions p S84 (Senator the Hon M.Reid)

Roll period.<sup>42</sup> The AEC speculates that if Senator Reid's letters were sent a couple of days after the close of the Roll, then it is possible that the list Senator Reid used did not reflect those changes.

- 2.41 Enhancing the accuracy of the Roll is an ongoing process. Since 1984 the AEC has done this through the development of RMANS, the AEC's Roll management system.<sup>43</sup> Over the time since its implementation, RMANS has undergone a number of modifications to expand its capabilities. Currently, the AEC is progressing this task by the introduction of an Address Register and a continuous Roll update to the existing address-based system.
- 2.42 The Address Register has enhanced RMANS by allowing individual addresses to be stored separately on the enrolment system whether or not the address is occupied by an elector. The Register lists a range of attributes for each address including a land use code, occupancy status, an enrolment limit, the last review date and whether the address is habitable and valid for enrolment. As the information stored on the Register becomes more complete this will become an increasingly powerful tool for the AEC to detect fraudulent or inaccurate enrolment by identifying addresses incorrectly described or duplicated on the Register, those that have a high number of enrolments or re-enrolments, and those that have two or more groups of electors resident with different family names.<sup>44</sup>
- 2.43 Continuous Roll update was introduced as part of the *Electoral and Referendum Amendment Act 1995* as an improvement on the previous two yearly national doorknocks. Continuous Roll update is a method of updating the Roll using information sources that deal with changes of address, such as Australia Post, in order to pro-actively target with re-enrolment information voters who have moved.
- 2.44 A trial of continuous Roll updating was carried out in Queensland during 1996 and 1997 using change of address data provided by Australia Post. Following the success of this trial, the AEC committed to fully implementing the continuous Roll update through agreements with Australia Post, other government agencies such as motor vehicle licensing registries, and electricity corporations.<sup>45</sup>

---

42 Submissions p S1134 (AEC)

43 Joint Standing Committee on Electoral Matters. 1992. *The Conduct of Elections: New Boundaries for Cooperation*, Canberra, AGPS, pp 107-109.

44 Submissions p S347 (AEC)

45 Submissions p S348 (AEC)

2.45 By the time of the AEC's first appearance before the Committee on 1 April 1999, the Australian Electoral Commissioner was able to say that continuous roll updating would:

...be starting...nationally this month across Australia with mail outs from our own system. This should be a procedure that will help us to ensure that, when people do move, we get that information more readily, more accurately and in a more timely fashion from those electors. So the number of provisional voters should drop if the continuous Roll updating procedures we implement are successful.<sup>46</sup>

2.46 To continue this transition, the AEC recommends that electors are enrolled on the basis of address rather than Division. Currently, s99 of the Electoral Act specifies that enrolment must be on the basis of a Subdivision. Since the abolition of Subdivisions (except for the Divisions of the Northern Territory and Kalgoorlie in Western Australia), this has been interpreted as enrolment on the basis of a Division. Enrolment on the basis of address would allow the AEC to undertake objection action when the AEC is advised through the continuous Roll update process that an elector has moved from their enrolled address, and they have not re-enrolled for another address. Address based enrolment will also generate efficiencies in terms of Roll management for federal, state and local elections.<sup>47</sup>

2.47 During the JSCEM inquiries into the 1993 and 1996 federal elections the AEC raised the issue of basing enrolment on address. The proposal was not supported by the Committee because of the danger that electors who fail to keep their enrolment address up to date but still reside within a Division could be disenfranchised. Accordingly, on this occasion the AEC has suggested that if the Committee is still concerned about the potential disenfranchisement that the following option be adopted:

(1) That if an elector moves within their Division, does not re-enrol, and is removed by objection, their provisional vote for their Division will be counted, provided their last enrolment was within that Division and was since the last redistribution or general election; and

(2) That if an elector moves outside their enrolled Division, but remains within the State/ Territory, and claims a vote within their

---

46 Transcript p 46 (AEC)

47 Submissions p S720 (AEC)

old or new Division, their vote in the Senate will count but the House of Representatives vote will not count.<sup>48</sup>

### Recommendation 7

**2.48 That the *Commonwealth Electoral Act 1918* be amended to make the basis of enrolment the elector's address, and that the objection provisions be amended such that an elector can be removed from the Roll when it can be shown the elector no longer lives at their enrolled address.**

**If an elector moves within their Division, does not re-enrol, and is removed by objection, their provisional vote for their Division will be counted, provided their last enrolment was within that Division and was since the last redistribution or general election; and**

**If an elector moves outside their enrolled Division, but remains within the State/ Territory, and claims a vote within their old or new Division, their vote in the Senate will count but the House of Representatives vote will not count.**

### Offensive names

2.49 Candidates who were allowed to enrol using political slogans as names has occurred in recent federal elections.<sup>49</sup> Two submissions, one from Ms Marilyn Wilkin and another from Dr Marion Sawyer, point out that these names are offensive and designed to bring the electoral system into disrepute. They claim that the political slogans under which some candidates enrolled were not names in any accepted sense, rather they were grammatical strings.<sup>50</sup>

2.50 The AEC points out that DROs are not necessarily able to reject these names.<sup>51</sup> If the individual is able to show that their name has been generally accepted by a government instrumentality, including the Registrar of Births Deaths and Marriages, then the DRO has no alternative but to accept the new name.

---

48 Submissions p S720 (AEC)

49 Joint Standing Committee on Electoral Matters. 1997. *The Federal Election: Report of the Inquiry into the conduct of the 1996 Federal Election and matters related thereto*. Canberra, AGPS, p 76.

50 Submissions pp S17 (M.Wilkin) and S51 (M.Sawyer)

51 Submissions p S355 (AEC)

As a consequence, names of dubious origin, structure and meaning are increasingly appearing on the Roll for the sole purpose of nomination and the eventual appearance on the ballot paper for election purposes...<sup>52</sup>

- 2.51 At the 1998 federal election, for example, the following individuals stood for election. Each of these individuals were able to meet the legal requirements for enrolment:<sup>53</sup>
- Mr Prime Minister Piss the Family Court-Legal Aid;
  - Mr Justice Abolish Child Support and Family Court; and
  - Mr Bruce The Family Court Refuses My Daughter's Right to Know Her Father.
- 2.52 In Victoria, the Registrar of Births, Deaths and Marriages refused the name Prime Minister John Piss the Family Court and Legal Aid on the basis that this was either not a name, or was an offensive name. The individual concerned already had been enrolled under the new name, but the Registrar corrected the enrolment, leading the individual to take the case to the Victorian courts. The result of the case was a ruling in favour of the Registrar on the basis that the name could not be a grammatical string and that it could not be divided into a first and surname.<sup>54</sup>
- 2.53 The AEC points out that this decision could be used as a basis for a recommendation by the Committee aimed at preventing the use of such names in future elections. One possibility might be to amend the Electoral Act to expressly exclude any name that appears inappropriate under legal criteria to be drafted by the AEC in consultation with the Office of Parliamentary Council.<sup>55</sup>
- 2.54 The Committee believes that, in addition to this course of action, there is a need for the Registrars of Births, Deaths and Marriages in respective states and territories to tighten their criteria in relation to the registration of legal names. The Committee recommends that the federal Attorney General appeal to his or her respective state and territory counterparts that this course of action be taken.

---

52 Submissions p S355 (AEC)

53 Submissions p S355 (AEC)

54 Submissions pp S356-S357 (AEC)

55 Submissions p S358 (AEC)

**Recommendation 8**

- 2.55 **That the *Commonwealth Electoral Act 1918* be amended to allow the Divisional Returning Officer to exclude from enrolment any name that is invalid, and that the criteria for determining an invalid name be developed by the AEC in consultation with the Office of Parliamentary Counsel.**

**Recommendation 9**

- 2.56 **That the federal Attorney General appeal to his or her respective state and territory counterparts through the Standing Committee of Attorneys' General that there is a need for each state or territory Registrar of Births, Deaths and Marriages to tighten their criteria in relation to the registration of legal names.**
- 2.57 In a related matter, under s105(1)(b) of the Electoral Act, the DRO for a Division has the right to refuse a name change to the Electoral Roll. The AEC advises that the Attorney General's Department said that, unlike the majority of decisions by a DRO, this decision is not appealable. The AEC recommends that Part X of the Electoral Act be amended to make decisions under s105(1)(b) of the Electoral Act appealable to the Australian Electoral Officer and the Administrative Appeals Tribunal.<sup>56</sup> The Committee accepts this recommendation.

**Recommendation 10**

- 2.58 **That Part X of the *Commonwealth Electoral Act 1918* be amended to make decisions by a Divisional Returning Officer in relation to the enrolment of names appealable to the Australian Electoral Officer and the Administrative Appeals Tribunal.**

## Access to Roll

2.59 The AEC is currently required to provide access to the Commonwealth Electoral Roll through AEC offices. A hard copy is produced at least once every two years after the commencement of the first session of parliament and is able to be viewed or purchased for \$25 a Division at AEC offices. However, because of population mobility and computer updating, these rolls become inaccurate the moment they are printed.<sup>57</sup> Microfiche versions of the Roll are also produced for sale twice a year, and can be purchased for \$10 a Division or \$890 for the whole Roll.<sup>58</sup>

2.60 As part of the 1996 federal election inquiry report, the Committee recommended the distribution of the printed versions of the Roll to public libraries and post offices on the basis that the Roll was an important public document.<sup>59</sup> The Government rejected this recommendation on the basis of cost. Notwithstanding this:

The Commission is concerned about the present unsatisfactory level of access to the Commonwealth Electoral Roll that is afforded to citizens who wish to check for themselves that enrolment fraud is under control...<sup>60</sup>

2.61 The AEC argues that because the printed electoral rolls are becoming an increasingly inefficient and inaccurate method of publishing the Roll, the Roll should be made available through the AEC's internet site, allowing the public access to the Roll from home or from public libraries.<sup>61</sup>

2.62 The AEC argues that such an innovation would allow electors, wherever electronic communications are available, to check their enrolment details, and to check the correctness of the enrolment details of others for objection purposes. The inquirer will be able to search the internet Roll by individual name or address in a way similar to the currently available internet telephone directories. The search mechanisms will only provide access to the enrolment details of the individual whose name and address has been entered in the search mechanism. In other words, the internet Roll will not allow access to any of the complete rolls. In instances where public libraries do not have access to the internet, the AEC will provide public libraries with the Roll on CD-Rom with the same search facility.<sup>62</sup>

---

57 Submissions p S351 (AEC)

58 AEC web page, [www.aec.gov.au/enrol/maintain.htm](http://www.aec.gov.au/enrol/maintain.htm)

59 Joint Standing Committee on Electoral Matters. 1997. *The Federal Election: Report of the Inquiry into the conduct of the 1996 Federal Election and matters related thereto*. Canberra, AGPS, p 17.

60 Transcript p 39 (AEC)

61 Submissions p S351 (AEC)

62 Submissions p S350 (AEC)



The AEC reported that the New Zealand Electoral Commission already has an internet roll in operation, but requires the inquirer to provide birth date in addition to name and address. The AEC believes that this limits public access to 'own' enrolment information. Accordingly, the AEC suggests that in the Australian context the internet Roll should be more accessible to allow the enrolment of other electors to be checked for objection and petition purposes. This means the public can check the accuracy of the Roll for themselves.

- 2.63 The AEC referred the proposal to the Privacy Commissioner, who found that the provision of the Roll in electronic form should be regularly updated to ensure those who apply for a silent enrolment are removed from the public rolls promptly. In the light of those comments the AEC concludes that making the Roll available on the internet and providing CD-Roms to libraries would address this concern. The AEC recommends the Roll be updated every month.<sup>63</sup>
- 2.64 The Government response to the JSCEM report on the 1996 federal election asked the AEC to investigate the cost and feasibility of placing the electoral rolls on the internet. The AEC estimates the cost of developing the internet Roll will be \$120,000, annual running costs will be \$40,000, and maintenance costs will be \$42,000.<sup>64</sup> More recently, the AEC advised that it is preparing a paper on placing the electoral Roll on the internet.<sup>65</sup> The Committee has requested that the paper address safeguards for preventing the downloading of segments or the whole of the Roll.

### Recommendation 11

- 2.65 **Subject to the JSCEM acceptance of matters raised in the AEC's internet issue paper, that the publicly available Commonwealth Electoral Roll be provided on the AEC internet site for name and address/locality search purposes, and that the Roll be provided in CD-Rom format with the same search facility to public libraries without internet access. Both the internet and CD-Rom Roll should be updated monthly subject to search capacity being limited to individual names and addresses on the Roll.**
- 2.66 Replacing the hard copy versions of the Roll with electronic versions for the purposes of public access may address the public's concerns about the

63 Submissions p S352 (AEC)

64 Submissions p S352 (AEC)

65 Submissions p S2429 (AEC)

commercial use of the Rolls. This concern is best expressed by Mrs Margaret Woolnough:

My name and address, unless I authorise it, is not for sale or to be misused.<sup>66</sup>

2.67 In the opinion of the AEC, it is impossible to police the misuse of the names and addresses contained on the public versions of the Commonwealth Electoral Roll, in much the same way that it is impossible to police the use of the telephone directory.<sup>67</sup> The AEC have advised that:

The sale of enrolment information is an increasingly contentious issue that will be explored further in the AEC review of sections 89 to 92 of the Act... In the meantime, in response to concerns about the sale of enrolment information that can be easily scanned and used for commercial purposes, and in anticipation of placing the roll on the Internet, the AEC Management Board decided at its March 2000 meeting to cease production of microfiche rolls for the purposes of sale. The microfiche rolls will remain available for public inspection, and the printed rolls will remain available for public inspection and sale.<sup>68</sup>

2.68 In addition, the AEC has advised that the version of the Roll printed as a result of s89 of the Electoral Act following the 1998 federal election was produced with an experimental water mark to inhibit the reproduction of the Roll by scanning. However, the AEC indicates that, in order to effectively prevent scanning, the AEC logo had to be printed so densely it became difficult to read the small print name and address data. The AEC states that it will continue to investigate methods to prevent scanning of the printed rolls.<sup>69</sup> The Committee supports this work.

2.69 On a related matter, Mrs B James states that she received a letter from Queensland Health targeting women of her age, stating that her details were obtained from the Roll. Mrs James submits that the use of the Roll in this manner should be unlawful and was an invasion of privacy.<sup>70</sup>

2.70 In relation to Mrs James' complaint, the AEC points out that it does collect statutory information such as sex and age. This information is provided to state electoral commissions under ss91(9B) and 91A(2B) of the Electoral

---

66 Submissions p S1556 (M.Woolnough)

67 Submissions pp S1683-S1684 (AEC)

68 Submissions pS2429 (AEC)

69 Submissions pS2514 (AEC)

70 Submissions p S177 (B.James)

Act. The AEC explains that the information used in the mail out to Mrs James was obtained from the Queensland Electoral Commission.<sup>71</sup>

- 2.71 At present the marked roll of electors who lodge a postal vote is provided for physical observation 40 days after an election to candidates. The ALP suggests that in recognition of advances in technology that the AEC should provide candidates upon request with an electronic version of the marked roll. It also suggests that such a version of the roll should be provided to political parties Federally and in each of the States who respond to calls from electors for electoral advice and assistance.<sup>72</sup>

## Recommendation 12

- 2.72 **That the *Commonwealth Electoral Act 1918* be amended to allow access to an electronic version of the marked Roll and that this right of access should be extended to both candidates and party political organisations.**

## Nomination

- 2.73 Anyone who is an Australian citizen, is over the age of 18, and is eligible to vote can nominate as a candidate for the election, exclusive of those disqualified under s44 of the Constitution. Nominations can be lodged after the issue of the writs and before the close of nominations. Nominations for the 1998 federal election closed at 12 noon on Thursday 10 September 1998.<sup>73</sup>
- 2.74 Those nominating are required to pay a deposit and to obtain 50 signatures in order to be eligible. Major parties are allowed to lodge nominations in bulk for each state. Nominations can be withdrawn or amended at any time up to the close of nominations.<sup>74</sup>
- 2.75 As part of the *Electoral and Referendum Amendment Act 1998*, the deposit for nomination to the House of Representatives was increased from \$250 to \$350 and for nomination to the Senate from \$500 to \$700. The number of signatures required for candidates who are not bulk nominated by a

---

71 Submissions p S1143 (AEC)

72 Submissions p S795 (ALP)

73 Australian Electoral Commission. 1999. *Behind The Scenes: The Australian Electoral Commission's 1998 Federal Election Report*. Canberra, Paragon Printing, p 13.

74 Australian Electoral Commission. 1999. *Behind The Scenes: The Australian Electoral Commissions' 1998 Federal Election Report*. Canberra, Paragon Printing, p 14.

political party was also increased to 50 for both the House of Representatives and the Senate.<sup>75</sup>

- 2.76 However, this does not seem to have stemmed the increase in nominations. At the close of nominations a total of 1,438 candidates had nominated for the 1998 federal election, 1,109 for the House of Representatives and 329 for the Senate.<sup>76</sup> This is a considerable increase over the number nominating for the 1996 federal election when there were 908 nominees for the House of Representatives and 255 for the Senate.<sup>77</sup>

### Senate nomination issues

- 2.77 The steady increase in the number of nominations is causing problems for the design of the Senate ballot paper. The AEC's discretion in designing the Senate ballot paper is limited by schedule 1 of the Electoral Act. Some Senate ballot papers are getting so large they scarcely fit in the voting compartments and are increasingly difficult to fold properly. In addition, the AEC is concerned that the increased number of candidates for the Senate is proving detrimental to the production costs and efficiencies of the Senate ballot paper.
- 2.78 The AEC has concluded that the Senate ballot paper has reached its functional limits in terms of size and the only viable option is to increase the depth of the ballot paper to allow for the vertical layering of candidate names.<sup>78</sup> To facilitate this solution, the AEC recommends that the Australian Electoral Commissioner be given the discretion to design a ballot paper that accommodates the number of candidates standing.<sup>79</sup>
- 2.79 Mr Graham Smith proposes another solution to the ever-increasing size of the Senate ballot, recommending the introduction of a Group Voting Ticket only ballot paper, which would meet the requirements of the vast majority of voters who use the convenience of above the line voting.<sup>80</sup>
- 2.80 The Committee agrees that the increasing number of nominations for the Senate threatens the integrity of the Senate ballot paper and is keen to avoid the situation that occurred in the 1998 New South Wales election, which produced an enormous upper house ballot paper. The Committee considers the increasing number of registered political parties to be a

---

75 Submissions p S360 (AEC)

76 Submissions p S359 (AEC) These figures include the Newcastle supplementary election.

77 Australian Electoral Commission. 1998. *Electoral Newsfile, No 79*. Canberra, AEC, p 1.

78 Submissions p S380 and Transcript p 39 (AEC)

79 Submissions p S380 and Transcript p 51 (AEC)

80 Submissions pp S1300-S1301 (G.Smith)

major contributor to this problem. The Committee has made a number of recommendations in Chapter 5 to strengthen the party registration process in order to deter the fraudulent registration of political parties and prevent the considerable mushrooming of numbers of political parties that has taken place at the state level. The implementation of these recommendations should contain the growth of the Senate ballot paper and allow the Senate ballot paper to remain in its current form.

- 2.81 The Committee believes that providing the Australian Electoral Commissioner with the discretion to design the layout of the Senate ballot paper is worthwhile, but such discretion will require safeguards in order to be applied appropriately. The AEC has suggested that an alternate design of the Senate ballot paper could be included as a schedule in the Electoral Act. Such an approach has been included under the New South Wales legislation for the New South Wales Legislative Council ballot paper.<sup>81</sup>

### Recommendation 13

- 2.82 **That the *Commonwealth Electoral Act 1918* be amended to include a schedule setting out an alternate layout for the Senate ballot paper and that the AEC consult with the Joint Standing Committee on Electoral Matters on the alternate design.**
- 2.83 The AEC recommends a technical amendment to the Electoral Act to make explicit the rules governing the lodgement of Group Voting Tickets<sup>82</sup> as the rules are only implied at the moment.<sup>83</sup> The Committee sees this as a logical clarification.

---

81 Submissions pp S480-S483 and S2429 (AEC)

82 Group Voting Tickets are provided to the AEC by political parties or grouped independent candidates for the purposes of determining the flow of preferences for voters who vote above the line on the Senate ballot paper.

83 Submissions p S362 (AEC)

**Recommendation 14**

- 2.84 **That s211 of the *Commonwealth Electoral Act 1918* be amended to allow for the amendment or withdrawal of Group Voting Ticket statements up to the closing time for the lodgement of such statements; that such amendment or withdrawal may only be made by the person who lodged the original statement; that a further statement may be lodged prior to the closing time following the withdrawal of the original statement by any persons eligible to do so under s211(6); and that should a Group Voting Ticket statement be withdrawn, and a new statement not be lodged for the group prior to the closing time for lodgement, the group will not have a Group Voting Ticket square printed on the ballot paper.**
- 2.85 Another technical amendment has been proposed by the AEC. Currently, the return of nomination deposits for the House of Representatives is paid to the person who paid the nomination deposit. In the case of political parties, this is usually one person. The AEC recommends such a system be adopted for the Senate.<sup>84</sup> The Committee supports this recommendation.

**Recommendation 15**

- 2.86 **That the *Commonwealth Electoral Act 1918* be amended to ensure that the return of deposit for Senate candidates is made to the person who paid the deposit.**

**Death of a candidate**

- 2.87 On 2 October 1998, the day before polling day, Ms Kaye Westbury, the nominated Australian Democrats candidate for the Division of Newcastle, passed away. Under s180 of the Electoral Act, Ms Westbury's death resulted in a technical failure of the Newcastle House of Representatives election. This resulted in the need for a supplementary election, held on 21 November 1998.<sup>85</sup>
- 2.88 The situation of the death of Ms Westbury caused a great deal of confusion amongst the electors of Newcastle and Mr Allan Morris MP, Member for Newcastle, asks the Committee to consider whether Australia might adopt a system in which the ballot proceeds and a supplementary

---

84 Submissions p S363 (AEC)

85 Submissions p S363 (AEC)

election is only held if the deceased candidate wins, or alternatively to consider giving the Australian Electoral Commissioner the option of either calling a technical failure or continuing with the election.<sup>86</sup> The Committee is conscious of the difficulties faced both by candidates and voters in this situation, but considers that continuing the election in these circumstances would be detrimental to the democratic process.

- 2.89 Ms Westbury's death prompted some consideration by the AEC of the administrative process for dealing with the death or withdrawal of a candidate before the declaration of nominations. At present, if the candidate in question was not part of a bulk nomination, s177 of the Electoral Act allows the relevant party to make another nomination, and s156(2) allows for the extension of the close of nomination by 24 hours to accommodate this new nomination. The AEC recommends that this courtesy be extended to parties that bulk nominate candidates.<sup>87</sup> The Committee agrees with this proposal.

### Recommendation 16

- 2.90 **That ss177 and 180 of the *Commonwealth Electoral Act 1918* be amended to allow, up until the close of nominations, for the substitution of another candidate for a Division in a bulk nomination, where a candidate for that Division in a bulk nomination dies or withdraws their consent to act.**
- 2.91 The existing provision for dealing with the death of a candidate before the close of nominations for a Division is s156(2) of the Electoral Act, and for the death of a candidate after the declaration of nominations, s180 of the Electoral Act, but there is no remedy for the death of a candidate between the close of nominations and the declaration of nominations. Prior to 1998 this problem did not exist because the declaration occurred immediately following the close of nominations. However, with the passage of the *Electoral and Referendum Amendment Act 1998*, the declaration now takes place 24 hours after the close of nominations. The AEC recommends that the Electoral Act be amended to allow for a new nomination during this time by extending the time for a replacement nomination from the close of nominations to the time of declaration, and providing for an extension of 48 hours in the declaration time, that is 24 hours for a new close of nominations, and 24 hours after the close of nominations until the

86 Submissions p S714 and Transcript p 229 (A.Morris MP, Member for Newcastle)

87 Submissions p S364 (AEC)

declaration time.<sup>88</sup> The Committee does not support this recommendation.

## Independent candidate nomination issues

- 2.92 As discussed in relation to the increased number of nominations above, the requirements for nomination to stand as a candidate changed prior to the 1998 federal election. The AEC publicised the changes to the nomination requirements as widely as possible in the period available before the election, including in the Candidates' Handbook<sup>89</sup> and a media release on 7 September 1998. With a small number of exceptions,<sup>90</sup> independent candidates appeared able to accommodate the new requirement for 50 signatures. Two nominees were rejected because they could not obtain the 50 signatures.<sup>91</sup>
- 2.93 On a related issue, Mr Peter Andren MP, Member for Calare, argued that it was unfair for a sitting independent member to have to go through the process of obtaining 50 signatures in order to nominate as a candidate, especially as they have been endorsed by the majority of voters at the previous election.<sup>92</sup> The Committee is not convinced of this argument. The Committee considers that a candidate who is not able to obtain the required 50 signatures is unlikely to be re-elected.

## Political campaigns

- 2.94 Political campaigns and the rules governing them are an issue of contention in most federal election inquiries. This election has been no exception, with debate on authorisation; caretaker conventions; How To Vote cards; truth in political advertising; and dear neighbour letters.
- 2.95 The AEC recommends a technical amendment to the Electoral Act to correct an inaccuracy passed into law as part of the *Electoral and Referendum Amendment Act 1998*. Section 331 of the Electoral Act was amended to the effect that any article or paragraph containing electoral material in a journal (defined as a newspaper, magazine or other periodical) be labelled as an advertisement. The intent of this amendment

---

88 Submissions pp S364-S365 (AEC)

89 Australian Electoral Commission. 1998. *Candidates' Handbook for Federal Elections*. Canberra, AEC, 41p.

90 Submissions pp S81 (D.LePoidevin), S625 (E.Lockett) and S1121 (Australian Family Party)

91 Submissions p S360 (AEC)

92 Submissions p S83 (P.Andren MP, Member for Calare)



was to extend the ‘advertisement’ requirement to cover printed matter other than newspapers. However, as this amendment reads, it now implies that all political commentary in any journal must be labelled as an advertisement. The AEC recommends a change to the Electoral Act to reflect that only advertisements containing electoral material should be labelled ‘advertisement.’<sup>93</sup> The Committee agrees with this recommendation.

### Recommendation 17

- 2.96 **That s331 of the *Commonwealth Electoral Act 1918* and s124 of the *Referendum (Machinery Provisions) Act 1984* be amended to reflect that only electoral advertising in journals needs to be labelled as advertising.**
- 2.97 The AEC has consistently advised that the Director of Public Prosecutions (DPP) considers activities such as meet the candidate functions at which food and drink are provided do not involve conferring a benefit on electors.<sup>94</sup> Regardless of this advice, the ALP remains concerned that many candidates are unaware of the limits of s326 of the Electoral Act, and calls on the Committee to recommend that the limits of this section be made explicit.<sup>95</sup> The AEC reinforces its advice with reference to the following evidence that the Committee accepts.
- JSCEM. Inquiry into the 1993 federal election and matters related thereto. AEC Submission No. 153, dated 23 August 1994, Part E, 3p;
  - JSCEM. November 1994. *The 1993 federal election* report. pp 148-149 (paras 10.3 and Recommendation 72);
  - Government response to *The 1993 federal election* report. 21 September 1995. (response to Recommendation 72);
  - JSCEM. *Inquiry into the 1996 federal election and matters related thereto: Submissions*. pp S1490-S1492 (AEC Submission No. 90, paras 3.27.21-3.27.25);
  - JSCEM. June 1997. *The 1996 federal election* report. p 95. (paras 7.70-7.74); and

---

93 Submissions p S371 (AEC)

94 Submissions p S1196 (AEC)

95 Submissions p S794 (ALP)

- AEC. 17 July 1998. *Electoral Backgrounder No. 6: Influencing votes.* (pp 1-2).<sup>96</sup>

- 2.98 An issue relating to campaign mail accounts has also been raised. Mr Phil Baressi MP, Member for Deakin, was informed by the Department of Finance and Administration after the election that he owed an amount of money to Australia Post. It was only after persistent checking by his staff that it became clear that he had been billed in error.
- 2.99 After raising his concerns in parliament, representatives from Australia Post contacted Mr Baressi to inform him that the error in billing was a mistake on their part, and that he had been billed for those accounts not only related to Mr Baressi but also to his ALP opponent. This had occurred because Australia Post had mistakenly allocated the same account number to both candidates. In addition, Australia Post had failed to notify Mr Barresi of the error at the time it was detected in January 1999. The error amounted to six mail outs totalling \$14,610.19.<sup>97</sup>

## Authorisation of electoral advertising

- 2.100 Section 328 of the Electoral Act deals specifically with issues relating to the authorisation of electoral advertisements. In general terms, all electoral advertisements, excluding items such as pens, t-shirts and badges, must contain the name and street address of the person authorising the advertisement. The intent of this section is to prevent anonymity from being a protective shield for irresponsible and defamatory statements.<sup>98</sup> During the inquiry the Committee received submissions advocating both a greater level of authorisation,<sup>99</sup> and a lesser level.<sup>100</sup>
- 2.101 The AEC reports that during the election it fielded queries concerning what specifically an authorisation address should contain. Queries related to whether an electorate office could be an authorisation address, and whether a street name and suburb were sufficient. The AEC took the view that an electorate office was an adequate address, but that the address used must be complete, including street number. The AEC recommends that this be clarified in legislation.<sup>101</sup> The Committee accepts the thrust of the recommendation.

---

96 Submissions p S2430 (AEC)

97 Submissions pp S1550-S1551 (P.Barresi MP, Member for Deakin)

98 Australian Electoral Commission. 1998. *Electoral Backgrounder, No 5.* Canberra, AEC, p 1.

99 Submissions p S4 (E.Wensing)

100 Submissions p S180 (Hon L.Lieberman MP, Member for Indi)

101 Submissions p S369 (AEC)

**Recommendation 18**

- 2.102 **That the *Commonwealth Electoral Act 1918* be amended so the full address clearly identifying a physical location is given for authorisation purposes.**
- 2.103 The internet was used extensively during the 1998 federal election, but it is not entirely clear to what extent the authorisation provisions of the Electoral Act cover the distribution of electoral material on the internet. As a guide, the DPP advised the AEC during the 1996 federal election that:
- ...section 328 of the Electoral Act probably does not apply to electoral advertising on the internet, because the section makes no express reference to electronic advertising, and appears thereby to be confined to print advertising...<sup>102</sup>
- Notwithstanding this the AEC stated that it advised all those who inquired about internet advertising during the 1998 federal election that although the law does not explicitly require it, such advertising should contain proper authorisation in order to prevent mischief that arises from anonymous advertising.<sup>103</sup>
- 2.104 The ALP suggests that the best method for dealing with electoral advertising on the internet might be to amend s328 to make that section media neutral. The ALP also sought further investigation of this matter.<sup>104</sup> In response, the AEC points out that it investigated this matter in its submission to the JSCEM's 1996 federal election inquiry and on 17 July 1998 published an *Electoral Backgrounder No. 5: Electoral advertising* which was distributed to all candidates and political parties. It does not have the resources to actively monitor electoral content on the internet, it is only able to respond to complaints about electoral material on the internet. The AEC also points out that regulation would be difficult, as internet sites hosted overseas could break Australian electoral law with impunity. It suggests caution at this stage in legislating to regulate electoral matters on the Internet.<sup>105</sup>
- 2.105 Use of the internet for electoral advertising is in its early stages, and therefore the Committee will continue to monitor this practice and review it at a later stage.

---

102 Submissions p S368A (AEC)

103 Submissions p S369 (AEC)

104 Submissions p S791 (ALP)

105 Submissions pp S368A and S1195 (AEC)

## Caretaker conventions

- 2.106 The potential abuse of the caretaker conventions was an issue during the 1996 federal election<sup>106</sup> and continued to be an issue in 1998.<sup>107</sup> Mr Brian Cox, ex Australian Electoral Commissioner, is concerned at the potential abuse of the caretaker conventions by the incumbent government, particularly the use of \$10 million to \$15 million in taxpayer funds to advertise government policies prior to an election being called. Although not making any judgements as to whether advertising before the election was a breach of the caretaker conventions, he considers that this may be perceived as a breach. Mr Cox recommends that the caretaker conventions be made law, making their breach less easy and providing government agencies with the capacity to refuse to break the law when requested to do so by caretaker governments.<sup>108</sup>
- 2.107 The ALP also expressed some concerns at the level of government spending on advertising prior to the election being called:
- ...The spending of that public money had a marked effect on the outcome of the election and a marked effect on the positioning of major public policy issues for debate during that campaign. We believe this Committee should turn its attention to that form of spending, which we believe to be wrong and improper. It should not happen.<sup>109</sup>
- 2.108 In an effort to progress ALP concerns, Senator John Faulkner filed a complaint with the AEC on 20 August 1998 relating to government funded taxation reform advertising. In the complaint he claimed that, in the lead up to the 1998 federal election, such advertising breached ss 328 and 329 of the Electoral Act on the basis that they contained misleading and deceptive advertising. In other words, it did not contain government policy but a policy on taxation the government would introduce if they were re-elected.<sup>110</sup> The AEC took the view that the advertisements were an electoral matter and referred them to the DPP for examination. The DPP advised that the advertisements did not appear to breach the Electoral Act as they contained the correct authorisation details, and did not contain misleading matter in relation to the casting of a vote.<sup>111</sup>

---

106 Submissions p S368 (AEC)

107 Submissions pp S102 (B.Cox), S236 (D.McNaughton), S538 (L.DeFrederick), S539 (J.DeFrederick) and S786 (ALP)

108 Submissions p S102 and Transcript p 97 (B.Cox)

109 Transcript pp 21-22 (ALP)

110 Submissions p S368 (AEC)

111 Submissions p S368 (AEC)

- 2.109 The Committee welcomes the inclusion of authorisation details in all government advertising. In cases where concerns are raised about misleading government advertising, prompt action and early advice are required from the AEC.

## How To Vote cards

- 2.110 It is fairly clear to the Committee from the significant number of submissions received on the issue, that the distribution of How To Vote cards continues to offend a large number of people.<sup>112</sup> However, as these cards have become a central part of the political process, the Committee will not seek to prevent their use in the future. There is also an argument that How To Vote cards provide the public with useful information about the candidates.

- 2.111 A vast number of How To Vote cards are produced at each election. This has prompted the WA Minister for the Environment, Mrs Cheryl Edwardes MLA to:

...request that the Joint Standing Committee on Electoral Matters investigate the introduction of an Australia Wide program for HTV [How To Vote] cards to:

- be able to be reused at polling booths;
- approach all political parties with a view to reaching an agreement for all HTV cards to carry a message such as 'please return for re-use';
- approach all political parties with a view to reaching an agreement for all HTV cards to be printed on material that could make it readily recycled into packaging products; and
- implement a suitable program for the collection and recycling of HTV cards into packaging products.<sup>113</sup>

- 2.112 The Committee notes that it has become standard practice at polling booths for political parties to reuse How To Vote cards and that the AEC

---

112 Submissions pp S2 (A.Benney), S10 (B.Usher), S22 (A.Usher), S29 (M.Fallis), S44 (M.Damjanovic), S53-S54 (D.Haselgrove), S83 (P.Andren MP, Member for Calare), S95 (Australian Democrats Gold Coast Branch), S223 (G.Wadsworth), S229 (R.Kowald), S269 (B.Lord), S276, 278, 292 (VALUE), S288 (A.Hine), S308 (J.McEwen), S568 (S.Jackson), S571 (C.Gibson), S607 (Pauline Hanson's One Nation Victor Harbour Branch), S616 (W.MacMillan), S638 (L.Bauer), S667 (M.Goldstiver), S679 (Pauline Hanson's One Nation Nambour and District Branch), S691 (Office of the Leader of the One Nation Party Qld Parliament), S709 (R.Provan), S1339 (C.Turner), S1475 (Australian Democrats ACT Division) and S1825 (Office of the Leader of Pauline Hanson's One Nation Party)

113 Submissions p S683 (Hon. C.Edwardes MLA, WA Minister for the Environment)

already has procedures in place for recycling waste paper materials that remain at a polling booth after the close of polls.<sup>114</sup>

- 2.113 Erroneous How To Vote cards are a concern for the Australian Democrats ACT Division. Because the election was held on a long weekend the number of pre-poll and absentee votes increased. The use of pre-poll and absentee voting was crucial in determining who would represent the ACT in the Senate. During the week before polling day, the ACT Liberals distributed a How To Vote card that indicated Mr Rick Farley, the Australian Democrats candidate for the Senate, was an ALP candidate. According to the Democrats, the withdrawal of the erroneous card did not take place until the evening prior to polling day.<sup>115</sup>
- 2.114 Second preference How To Vote cards are a related but equally vexed issue. Basically, second preference How To Vote cards are:
- those authorised by one political party... seeking the second preferences of the supporters of minor political parties... in House of Representatives elections.<sup>116</sup>
- 2.115 Mr D Little said these can be viewed as misleading and deceptive because they can be mistaken as How To Vote cards for the first placed candidate.<sup>117</sup>
- 2.116 The Committee continues to receive requests for better regulation of these How To Vote cards,<sup>118</sup> such as that received from Mr and Mrs Reynolds, who argue that second preference How To Vote cards should be submitted to the AEC one week before polling to ensure they comply with the provisions of the Electoral Act.<sup>119</sup>
- 2.117 The AEC's *Electoral Backgrounder* on 'Unofficial' How To Vote cards pointed out the precedent case law relating to second preference How To Vote cards. That is, a How To Vote card which at first appearance appears to be from one political party, but is actually from another seeking the second preference of a voter, is legal in certain circumstances.<sup>120</sup>

---

114 Submissions p S1169 (AEC)

115 Submissions p S1474 (Australian Democrats ACT Division)

116 Submissions p S371 (AEC)

117 Submissions p S650 (D.Little)

118 Submissions pp S688 (V.Stewart), S690 (Office of the Leader of Pauline Hanson's One Nation Party QLD Parliament), S796 (ALP) and S1475 (Australian Democrats ACT Division)

119 Submissions p S195 (Mr&Mrs Reynolds)

120 Submissions p S367 (AEC) See also Australian Electoral Commission. 1998. *Electoral Backgrounder, No 3*. Canberra, AEC, pp 1-4.

- 2.118 Two sections of the Electoral Act are relevant to this issue. The first is s329(1), which makes it an offence to print during an election period anything that is likely to deceive an elector in relation to the casting of a vote. The second is s351(1)(b)(ii) of the Electoral Act, which:
- ...makes it an offence for any person , who, on behalf of an association, league, organisation, and without the written authority of a House of Representatives candidate, to announce or publish anything that expressly or impliedly advocates or suggests that that candidate should receive a first preference vote.<sup>121</sup>
- 2.119 The AEC advised that the history of this issue goes back to the 1993 federal election, when an unsuccessful candidate for the Division of Macquarie appealed the victory of Ms Maggie Deahm to the Court of Disputed Returns on a number of grounds, including the use of a second preference How To Vote card. Justice Gaudron, presiding over the Court of Disputed Returns, decided the second preference How To Vote card did not breach s 329(1) of the Electoral Act because the card contained the proper authorisation details.<sup>122</sup>
- 2.120 A Queensland Court of Disputed Returns decision on 15 September 1998 gave further direction to what constituted a legal second preference How To Vote card. Advice provided to the AEC by the DPP prior to the 1998 federal election indicated that this decision meant many of the second preference How To Vote cards used in the 1996 federal election may have breached s329(1) of the Electoral Act. The AEC wrote to the major political parties to that effect prior to the 1998 federal election.<sup>123</sup>
- 2.121 A number of complaints relating to second preference How To Vote cards were received by the AEC during the 1998 federal election. In each case the DPP advised the AEC that on the basis of the case law cited prosecution was unlikely to succeed.<sup>124</sup>
- 2.122 Part of the Queensland decision argued that an inexpensive measure that would not limit the solicitation of second preferences would be to require the cards to contain on their face, or both faces, the name of the party on whose behalf the cards are being distributed.<sup>125</sup> In theory, this would prevent any confusion as to the origin of the card.

---

121 Submissions p S372 (AEC)

122 Submissions p S372 (AEC)

123 Submissions p S373 (AEC)

124 Submissions p S374 (AEC)

125 Submissions p S375 (AEC)

- 2.123 The Legal, Constitutional and Administrative Review Committee of the Queensland Legislative Assembly undertook an inquiry into the implications of the Queensland Court of Disputed Returns decision, and delivered its report in September 1999. That Committee supported the Court of Disputed returns' suggestion concerning authorisation on the basis that more stringent authorisation requirements for How To Vote cards would enhance the voter's ability to make an informed decision on the contents of the card.<sup>126</sup>
- 2.124 The Queensland Committee felt that in applying the Court's suggestion:
- the more stringent authorisation requirements should apply only to How To Vote cards;
  - that the authorisation requirements should apply to all How To Vote cards and should not be restricted to second preference How To Vote cards;
  - that a How To Vote card be broadly defined to include those How To Vote cards that are narrative in nature;
  - that the authorisation must contain the name or abbreviation of the party of origin or the name of the independent candidate as well as the other authorisation details; and
  - that the text of the authorisation appear on every printed face of the document and that the font size of the authorisation range from 10 point for an A6 size card to 20 point for an A3 size card.<sup>127</sup>
- 2.125 The AEC suggests a slightly different amendment to s328 of the Electoral Act to require all electoral advertising advocating a second or later preference on behalf of the candidate placed second or later on the How To Vote card contain at the top of the advertisement the name and address of the person authorising the advertisement, and the name of the political party of origin in no less that 12 point font.<sup>128</sup> The AEC states it is making

---

126 Legal, Constitutional and Administrative Review Committee of the Queensland Legislative Assembly. 1999. *Issues of Electoral Reform Raised In the Mansfield Decision: Regulating How To Vote Cards and Providing For Appeals From the Court of Disputed Returns*. Brisbane, Queensland Legislative Assembly, p 21.

127 Legal, Constitutional and Administrative Review Committee of the Queensland Legislative Assembly. 1999. *Issues of Electoral Reform Raised In the Mansfield Decision: Regulating How To Vote Cards and Providing For Appeals From the Court of Disputed Returns*. Brisbane, Queensland Legislative Assembly, pp 22-24.

128 Submissions p S375 (AEC)



this recommendation in the interests of transparency.<sup>129</sup> Mr Ed Wensing also supports a minimum 12 point font for authorisation details.<sup>130</sup>

- 2.126 The AEC claims that the recommendation needs to specifically address second preference How To Vote cards on the basis that case law on matters of deceptive information tends towards a narrow reading of the legislation, making generalised approaches ineffective.<sup>131</sup>
- 2.127 The Committee is reluctant to recommend an authorisation regime specific to second preference How To Vote cards. The Committee notes that in evidence the AEC has indicated the advantages to be gained from similar state and federal regulation on issues such as these.<sup>132</sup>
- 2.128 The Committee believes that it would be more appropriate to apply an extended authorisation regime to all How To Vote cards in a manner similar to that decided by the Queensland Committee. The Committee therefore recommends that the AEC develop an authorisation regime for all How To Vote cards guided by the findings of the Queensland Legislative Assembly Legal, Constitutional and Administrative Review Committee.

## **Recommendation 19**

- 2.129 **That the AEC develop an expanded authorisation regime for How To Vote cards which will:**
- **define How To Vote cards broadly so as to include How To Vote cards that are narrative in nature;**
  - **ensure the authorisation details include the name of the political party of origin or the name of the independent candidate as well as the other authorisation details; and**
  - **include a requirement for the authorisation details to be printed prominently (in 12 point) on each printed side of the How To Vote card.**

**The authorisation regime should ultimately be included in the *Commonwealth Electoral Act 1918*.**

---

129 Transcript p 427 (AEC)

130 Submissions p S4 (E.Wensing)

131 Transcript p 437 (AEC)

132 Transcript p 423 (AEC)

- 2.130 The AEC also recommends that the other relevant section of the Electoral Act, s351(1) (see paragraph 2.118), should be repealed on the basis that it is redundant.<sup>133</sup>
- 2.131 The Committee is of the opinion that this section should remain on the basis that it is potentially still very relevant.

### Truth in political advertising

- 2.132 Truth in political advertising is currently dealt with in s329 of the Electoral Act. Section 329(1) of the Act makes it an offence during the election period to print, publish or distribute any matter or thing that is likely to deceive an elector in relation to the casting of a vote. However, this section is not intended to regulate the content of political messages directed at influencing the choice of preferred candidates by voters.<sup>134</sup>
- 2.133 This effectively means that only published or broadcast material which gives misleading or deceptive information about obtaining and marking a ballot paper and depositing a vote in a ballot box would be in breach of s329 of the Electoral Act.<sup>135</sup>
- 2.134 Not surprisingly, a number of participants in this inquiry have some concerns about the limits of s329 of the Electoral Act.<sup>136</sup> One of these is Mr Robert McClelland MP, Member for Barton. Mr McClelland's concern was prompted by the amount of electoral material that is being distributed immediately prior to the poll which prevents a candidate objecting to its content.

If that material contains misleading statements of fact, it is extremely difficult for a candidate to rebut that before election day.<sup>137</sup>

- 2.135 Mr McClelland suggests that the Committee reinstate its 1996 federal election inquiry report recommendation that the Electoral Act and the relevant broadcasting legislation be amended to prevent misleading statements of fact in electoral advertisements during election periods.<sup>138</sup>

---

133 Submissions p S375 (AEC)

134 Submissions p S376 (AEC)

135 Submissions p S376 (AEC)

136 Submissions pp S63 (R.Shaw); p S82 and Transcript p 14 (R.McClelland MP, Member for Barton); Submissions p S614 (K.McSweeney) and Transcript p324 (Office of Pauline Hanson's One Nation Party Qld Parliament)

137 Transcript p 14 (R.McClelland MP, Member for Barton)

138 Transcript p 14 (R.McClelland MP, Member for Barton)

- 2.136 In evidence Mr McClelland suggests that any amendment should apply to statements of fact rather than opinion, on the basis that misleading statements do raise difficult issues of interpretation, while a false statement of fact is easily identifiable.<sup>139</sup>
- 2.137 Another advocate of truth in political advertising regulation is the Australian Democrats, which proposes the South Australian model of truth in political advertising legislation:
- Experience teaches us that when the competitive interests of political parties are at stake, only force of law will ensure that reasonable standards of truthfulness are upheld.<sup>140</sup>
- 2.138 The parliament was considering legislation based on the South Australian model of truth in political advertising legislation prior to the 1996 federal election. These provisions would have made it illegal during an election campaign to distribute any electoral advertising containing a statement that was misleading or deceptive. However, this was not pursued following the 1996 federal election.<sup>141</sup>
- 2.139 The government response to the 1996 federal election inquiry report<sup>142</sup> rejected the recommendation relating to truth in political advertising on the basis that such legislation would be difficult to enforce.
- 2.140 The AEC points out that:
- Over the past decade, the AEC has consistently advised the JSCEM that any regulation of the 'truth' of political debate would be unwise and unworkable...<sup>143</sup>

---

139 Transcript p 16 (R.McClelland MP, Member for Barton)

140 Submissions p S1617 (Australian Democrats)

141 Submissions p S1617 (Australian Democrats)

142 Joint Standing Committee on Electoral Matters. 1997. *The Federal Election: Report of the Inquiry into the conduct of the 1996 Federal Election and matters related thereto*. Canberra, AGPS, pp 81-85.

143 Submissions p S376 (AEC)

## Dear neighbour letters

- 2.141 The AEC received a number of complaints concerning dear neighbour letters promoting a particular candidate that are distributed by volunteer workers to whole or part suburbs by letter box drop. The AEC argues that these complaints are based on a misunderstanding of the relevant legislation, in that they do not need to be addressed to a specific individual; do not need to be identified as originating from a particular political party or candidate; and need not contain the address of the place of business of the printer. They do, however, need to contain the name and full address of the sender.<sup>144</sup>
- 2.142 A large number of complaints were received by the AEC in relation to dear neighbour letters distributed in the ACT on behalf of Senator Margaret Reid. These letters did not contain the full address of the signatories, leading many to believe that the signatories were fictitious. The AEC referred the matter to the Australian Federal Police, which concluded that the signatories were real. The ACT Division of the Liberal Party was warned in relation to not providing the full address of the signatory, and the matter was left there.<sup>145</sup>
- 2.143 A related aspect of campaigning that has come to the attention of the Committee is the practice of using unauthorised endorsements. The AEC investigated a complaint against Ms Fran Bailey MP, Member for McEwen, on the basis that an endorsement of Ms Bailey had been distributed to the electorate without the consent of the author. The Committee received a submission from Mrs Margaret Woodgate in relation to this letter.
- Just prior to the October 1998 Federal election residents of my local area (Broadford, Victoria) were sent a letter purporting to be from a local resident endorsing a local candidate. It came to light however, after the election, that in fact the letter had not been sent by the resident but that the candidate had modified a previous endorsement letter sent to her, readdressed it and put the resident's signature on it, all without her permission...<sup>146</sup>
- 2.144 As the author made no formal complaint in relation to the letter, and Ms Bailey apologised to the author for its use, the AEC left the matter there.<sup>147</sup>
- 

144 Submissions p S369 (AEC)

145 Submissions pp S369-S370 (AEC) and S1475 (Australian Democrats ACT Division)

146 Submissions p S65 (M.Woodgate)

147 Submissions p S370 (AEC)

2.145 Another alleged unauthorised endorsement brought to the attention of the Committee featured in the campaign literature of Mr Phil Baressi MP, Member for Deakin. The pamphlet featured the quote “you showed yourself to be the right man for the job.” Mr Tony Robinson MP, Member for Mitcham in the Victorian parliament, understands that the statement was actually part of a letter sent by the local Communities Council on Ethnic Issues, and related to Mr Baressi’s contribution to a multicultural forum conducted by the organisation some time prior to the election.<sup>148</sup> According to the submitter:

The practice of unauthorised endorsements is, in my opinion, reprehensible. At its worst, as in this case, it represents a fundamental betrayal of the trust placed in an elected member of Parliament by their constituency...<sup>149</sup>

2.146 The Committee notes that it is a common and accepted practice to use quotes from constituents in political campaigns. The Committee does not see a need to take action on unauthorised endorsements at this stage, but would remind members of parliament and candidates of the necessity to have authorisation to use any such quotes when using this campaign tool in future.

## Declaration voting

2.147 It is essential that all Australian voters be provided with access to voting facilities for a federal election. A number of alternative ways of casting a vote are therefore provided to voters who are unable to cast an ordinary vote at a polling booth on election day. These alternative forms of voting are known as declaration voting.

2.148 Methods of declaration voting include:

- pre-poll voting – a form of declaration voting for electors who will not be in their home state or territory or are unable to attend a polling booth on polling day. A voter can attend an AEC office or one of the special pre-poll voting centres set up before polling day to cast their vote. Some of these special centres stay open on polling day to take the votes of those electors travelling interstate;
- postal voting – a voter who will not be in his or her home state or territory or is unable to attend a polling booth on election day may cast

---

148 Submissions pp S608-S609 (T.Robinson MP, Member for Mitcham)

149 Submissions p S609 (T.Robinson MP, Member for Mitcham)

a postal vote before polling day by making a written application to the DRO. The DRO posts out the ballot papers and declaration envelope to the voter to return. A voter can register as a general postal voter and have the ballot papers and declaration envelope despatched to them automatically on the announcement of an election;

- **absent voting** – a voter who will not be able to attend a polling booth in his or her home Division may cast an absent vote in any other Division in the same state or territory. Interstate voters must cast a pre-poll vote on polling day at a pre-poll voting centre; and
- **provisional voting** – a voter who does not appear on the Electoral Roll for their Division, or whose name has already been marked off the Roll may cast a provisional vote by declaration. Such votes undergo careful checking of enrolment details before being counted.<sup>150</sup> Provisional voting is dealt with in Chapter 3 of this report.

2.149 To make a declaration vote, a voter must fill out his or her details and make a declaration as to their eligibility to cast such a vote on a declaration envelope. The vote is then completed and placed in the declaration envelope. After polling day all sealed declaration envelopes must pass through a preliminary scrutiny process before they are opened and admitted to the count. This process involves the voter's eligibility details being checked against the Commonwealth Electoral Roll.<sup>151</sup>

2.150 If, during the preliminary scrutiny process, information on a declaration envelope is insufficient to determine its admissibility to the count, further investigation is undertaken. In some cases personal contact is made with the electors concerned to clarify information. Signature comparisons can also be made with copies of the original electoral enrolment forms.<sup>152</sup> The AEC indicates that it:

... spends as much time as is necessary to verify the inclusion/exclusion of any particular declaration envelope.<sup>153</sup>

2.151 The AEC suggests a technical amendment to the Electoral Act in relation to the counting of declaration votes. The AEC points out that it is currently possible to accept an absent, pre-poll or provisional vote if the declaration envelope is not witnessed, provided a voter's name appears on the record made under s232(2) or s200G, or if the DRO is satisfied the

---

150 Submissions pp S391-S392 (AEC)

151 Submissions pp S391-S392 (AEC)

152 Submissions p S1163 (AEC)

153 Submissions p S1173 (AEC)

ballot paper is properly issued.<sup>154</sup> For the DRO to be satisfied, it is current practice for the DRO to forward the declaration certificate to the issuing Division to check this against the issuing stub. In conducting this procedure a declaration vote has never been rejected. The AEC reported:

...This is primarily because declaration votes are accounted for from issue in the polling place, on return to the Divisional office, through the declaration vote exchange, and on the check-count at the home Division. Consequently, there is no opportunity for the input of bogus declaration votes...<sup>155</sup>

- 2.152 The AEC suggests that it no longer be necessary to check that the voter's name appears on the records of the originating Division for declaration votes, rather that if there is no witness, the DRO need only be satisfied that the ballot paper was properly issued.<sup>156</sup> The Committee does not agree with this suggestion as the procedures currently in place run smoothly.
- 2.153 Mr Alan Hampton suggests that as the electorate expects the election results quickly, and in many marginal electorates, the final result can be dependent on declaration and pre-poll voting, it might be possible to process all pre-poll and declaration votes up to the point of counting of the ballot before election day.<sup>157</sup> The Committee understands Mr Hampton's concerns, but in a Division in which the result is close the declaration of the ballot cannot take place until the final date for the receipt of postal votes, which is 13 days after election day.

## Increase in declaration voting

- 2.154 Of the 11,587,353 formal votes cast at the 1998 federal election, 2,074,065, or 17.9% were declaration votes.<sup>158</sup> The following table shows that declaration voting is increasing.

---

154 Submissions p S413 (AEC)

155 Submissions p S413 (AEC)

156 Submissions p S414 (AEC)

157 Submissions p S147 (A.Hampton)

158 Submissions p S392 (AEC)

Table 2.2 Declaration vote statistics

	1993 federal election	1996 federal election	1998 federal election
<b>Declaration Votes:</b>			
Absent votes	642,857 (6.02%)	657,539 (5.82%)	776,859 (6.70%)
Provisional votes	58,750 (0.55%)	105,091 (0.93%)	116,158 (1.00%)
Pre-poll votes	352,217 (3.30%)	434,841 (3.85%)	692,377 (5.98%)
Postal votes	306,496 (2.87%)	359,604 (3.18%)	488,671 (4.22%)
<b>Total Declaration Votes</b>	<b>1,360,320 (12.74%)</b>	<b>1,557,075 (13.78%)</b>	<b>2,074,065 (17.90%)</b>
Ordinary votes	9,314,485 (87.26%)	9,737,404 (86.22%)	9,513,288 (82.10%)
<b>Total Votes</b>	<b>10,674,805 (100%)</b>	<b>11,294,479 (100%)</b>	<b>11,587,353 (100%)</b>

Source AEC submission, p S392

2.155 Whilst Table 2.2 shows an increase in declaration voting in the last three federal elections, the Committee understands that the timing of the federal election, on a long weekend and during school holidays in some states and territories, resulted in a higher level of declaration voting than would normally have been the case. While it may be true that many voters are viewing declaration voting as a more convenient form of voting than appearing at the polling booths on election day, the Committee would like to determine whether that is actually the case.

## Recommendation 20

2.156 **The AEC conduct an investigation to determine the reasons for the changes in the pattern of declaration voting.**

### Pre-poll voting

2.157 The Committee notes that the AEC suggests changes to the postal vote application form so that the applicant must tick off the reason why the applicant requires a postal vote from a list of permitted reasons in the legislation (see paragraph 2.197 below).<sup>159</sup> Qualification for a postal vote applicant are already listed on the application form but an applicant is not required to indicate their reasons for seeking this vote. The Committee supports this course of action and calls on the AEC to implement a similar arrangement with pre-poll voting forms.

159 Submissions p S399 (AEC)



**Recommendation 21**

- 2.158 **That the AEC modify its pre-poll voting form so that voters are requested to tick off the reason why they require a pre-poll vote from a list of permitted reasons in the legislation.**
- 2.159 This recommendation is not intended to disenfranchise those voters who fail to indicate the reason they require a pre-poll vote. Failure to indicate a reason for requiring a pre-poll vote should not result in the disqualification of the vote.

**Pre-poll voting in home Divisions**

- 2.160 The AEC has consistently argued since 1993 that pre-poll votes cast in the elector's own Division be considered an ordinary vote rather than a declaration vote. The AEC argues that:

The provision of an ordinary pre-poll vote in the home Division would represent no more than an administrative simplification, with attendant time and cost efficiencies...<sup>160</sup>

- 2.161 The AEC argues that the admission of pre-poll votes as ordinary votes would not necessarily encourage the use of this as an alternative to voting on polling day as such voters would still have to provide a legitimate reason for casting a pre-poll vote.<sup>161</sup>
- 2.162 The Committee considers that allowing such a change would be contradictory to its overall strategy of discouraging the increasing use of declaration voting.

**Pre-poll schedules**

- 2.163 The Committee has received complaints in relation to incorrect advice being given by the AEC for pre-poll schedules and arrangements. In the Division of Hindmarsh the Liberal Party indicate that they believe the level of notification in relation to the schedule was less than desirable, claiming that two pre-poll voting centres were opened earlier than the scheduled date without notifying candidates.<sup>162</sup> The Australian Democrats complain that their South Australian central office did not receive all information regarding polling booths from the Divisional offices.<sup>163</sup>

---

160 Submissions p S393 (AEC)

161 Submissions p S393 (AEC)

162 Submissions p S779 (Liberal Party)

163 Submissions p S227 (Australian Democrats South Australian Division)

- 2.164 The AEC disputes these complaints, stating that pre-poll voting centres did not open earlier than the scheduled time.<sup>164</sup>
- 2.165 The Committee realises that incorrect information can be critical to candidates running for election. The Committee recommends the AEC review its current practices to ensure that the information communicated to both the candidates and the public in relation to pre-polling facilities is clear and correct.

## **Recommendation 22**

- 2.166 That the AEC review its current practices to ensure that the information communicated to the candidates and the public in relation to pre-polling facilities is clear and correct.**

### **Pre-poll centres**

- 2.167 A couple of submitters expressed their concern about the location of pre-poll voting centres. The Hon. Lou Lieberman MP, Member for Indi, indicates there were insufficient pre-polling facilities in his electorate, with cities such as Benalla unsuccessfully seeking pre-poll voting centres, and the ALP Charters Towers Branch point out that there were no pre-poll facilities in Charters Towers.<sup>165</sup> The AEC does not address these issues as part of the inquiry. The Committee suggests the AEC take these concerns into account at future electoral events.
- 2.168 Mr Barry Wakelin MP, Member for Grey, has undertaken an extended campaign to obtain pre-poll voting centres at Roxby Downs, where working conditions prevent some electors voting on election day.<sup>166</sup>
- 2.169 The AEC states that the polling arrangements at Roxby Downs for the 1998 federal election were similar to those for the 1996 election because, following the 1996 election, there were no complaints or suggestions from either the miners or the employer organisations regarding polling facilities.<sup>167</sup>
- 2.170 According to the AEC, the shift workers at Roxby Downs are aware of their shifts up to six months in advance, and postal voting was deemed appropriate under these circumstances. On the basis of previous

---

164 Submissions p S1183 (AEC)

165 Submissions pp S180 (Hon L.Lieberman MP, Member for Indi) and S636 (ALP Charters Towers Branch)

166 Submissions p S722 and Transcript p 2 (B.Wakelin MP, Member for Grey)

167 Submissions p S1180 (AEC)

experience and direct contact between the DRO and the coordinator of private contracts at Roxby Downs after the announcement of the election, 2,500 postal vote applications were forwarded to Roxby Downs.<sup>168</sup>

#### Party workers at pre-poll centres

- 2.171 The AEC is making increasing use of non-government buildings for pre-poll voting centres, including airports, shopping malls and other private properties. Both the ALP and the Liberal Party indicate that party workers experienced difficulties distributing electoral material at some pre-poll voting centres. Both parties stress the importance to the political process of the effective communication of electoral material, and with that in mind, recommend that the AEC, when securing pre-poll voting facilities, ensure that party workers can have access to the site.<sup>169</sup>
- 2.172 The Committee appreciates the importance political parties place on ensuring party workers have access to pre-poll voting centres. The AEC agrees that party workers should not be prevented from handing out How To Vote material to electors and points out that it is standard practice for DROs to seek the co-operation of private or public owners of premises wherever polling is conducted.<sup>170</sup>

### Recommendation 23

- 2.173 That the AEC seek agreement, where appropriate, from the owners of the premises on which a pre-poll is located to ensure that no unreasonable restriction is placed on the right of persons to distribute the customary election material or for voters to receive that material at or in the vicinity of the pre-poll.**

---

168 Submissions p S1180 (AEC)

169 Submissions pp S777-S778 (Liberal Party), S789 (ALP) and Transcript p 36 (ALP)

170 Submissions pp S1188 and S1194 (AEC)

## Antarctic voters

- 2.174 Currently, Antarctic votes are processed as postal votes. As voters in the Antarctic vote at a designated polling place this definition is inaccurate. The AEC recommends that the Electoral Act be amended to process votes cast by Antarctic electors as pre-poll votes.<sup>171</sup> The Committee accepts this recommendation.

### Recommendation 24

- 2.175 **That the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to process votes cast in the Antarctic as pre-poll votes.**

## Postal voting

### Separate postal ballot papers

- 2.176 Under the Electoral Act, the AEC is required to produce a separate postal ballot paper with distinct markings. This means the AEC has to estimate the requirement for such ballot papers in advance and produce two types of ballot papers.
- 2.177 The AEC points out that the strict procedures in place for the accounting of all postal ballot papers during production, issue and receipt make such a distinction redundant. The AEC therefore recommends that ordinary ballot papers be used for postal voting in the future allowing for administrative and cost efficiencies in the production of ballot papers.<sup>172</sup> The Committee agrees that this will improve the efficiency of the conduct of elections.

### Recommendation 25

- 2.178 **That section 209(5) of the *Commonwealth Electoral Act 1918* and section 25(4) of the *Referendum (Machinery Provisions) Act 1984*, requiring the production of separate postal ballot papers, be deleted so as to allow the same ballot paper to be used for all forms of voting.**

---

171 Submissions p S403 (AEC)

172 Submissions p S395 (AEC)

### Double enveloping

- 2.179 Double enveloping of postal ballot papers was introduced during the 1998 federal election for the first time. During the election 5.22% of Senate postal votes and 2% of House of Representatives postal votes were returned with the ballot papers outside the declaration envelope, but inside the business reply paid envelope and thus were counted as informal.<sup>173</sup>
- 2.180 The AEC recommends that the Electoral Act be amended to allow for the inclusion in the count of those ballot papers that are posted outside the declaration envelope but inside the business reply paid envelope provided that the declaration certificate is accepted.<sup>174</sup> However, the AEC states that early indications in the 1999 Referendum are that the percentage of informal votes caused by failing to put the ballot inside the declaration envelope is significantly lower than that recorded in the 1998 federal election.<sup>175</sup>
- 2.181 The Committee believes that the high level of confusion at the 1998 federal election was transitional due to the introduction of a new system and is unlikely to be repeated to the same extent in future elections. The AEC indicates it will reassess the art work for postal ballot certificates in order to make the instructions relating to double enveloping more prominent.<sup>176</sup>

### Spoilt postal ballot papers

- 2.182 Section 328 of the Electoral Act is intended for the reissue of ballot papers where a polling official is satisfied that a ballot paper has been spoilt. This clause is intended for polling places and pre-poll voting centres but has been interpreted for use with postal votes. The AEC recommends that the Electoral Act be amended to allow for the replacement of spoilt, lost or undelivered postal ballot papers on written application from the elector.<sup>177</sup>
- 2.183 The Committee agrees with this recommendation. However, if the AEC receives two or more postal ballot papers from an individual elector as a result of a request for replacement ballot papers, the AEC should discard any second or subsequent set of ballot papers received.

---

173 Submissions p S394 (AEC)

174 Submissions p S395 (AEC)

175 Transcript p 434 (AEC)

176 Submissions p S394 (AEC)

177 Submissions p S402 (AEC)

**Recommendation 26**

- 2.184 **That the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to specifically allow for the replacement of spoilt, lost or undelivered postal ballot papers on written application from the elector. If the AEC receives two or more sets of ballot papers from an individual elector as a result of a request for replacement ballot papers, the AEC should discard any second or subsequent set of ballot papers received and keep a record of such occurrences to determine whether there is an intention to multiple vote.**

**Postmarking of postal ballot papers**

- 2.185 Currently, an envelope purporting to contain a postal ballot cannot be considered as part of the count if it is postmarked after election day. As a number of postal voters assume that they cannot vote until election day, this means their ballots are discarded. The AEC recommends that the date of the witness' signature be taken as the day determining the validity of a postal vote.<sup>178</sup>
- 2.186 In its submission to the 1993 federal election inquiry the AEC stated that a survey of postal vote envelopes in the Division of Chifley indicated that 42% had no postmark and a further 5% had an illegible postmark. When the Division of Chifley was again examined for the 1996 election, the AEC advised that the percentage of postal votes not postmarked was 59% and a further 20% had an illegible postmark. The AEC noted that a substantial number of the 59% would have been 'Business Reply Paid' envelopes which are not normally postmarked by Australia Post.
- 2.187 In addition, the AEC has advised that another factor rendering the postmarking irrelevant is Australia Post's application of Delivery Point Identifiers (DPIDs) to approximately 90% of postal addresses in Australia and the adoption of this technology by the AEC. This means that in the dispatch of postal vote materials to applicants, the AEC uses a barcoded DPID and in the return processing of postal vote envelopes through most mail exchanges a postmark is no longer applied.
- 2.188 The AEC concludes that:
- ...it is increasingly rare for postal vote envelopes returned to the AEC to carry postmarks and it is increasingly the case that the AEC is unable to determine whether a late postal vote was posted

within time, based on the postmark. The only useful indicator remains the date of the witness signature.<sup>179</sup>

- 2.189 Such a change would resolve the issue raised by Mr Tony Lawler MP, Member for Parkes, concerning electors on the nine once a week mail runs that operate out of Broken Hill. Given the timeframes involved in federal elections, there is the potential for voters on these mail runs to be disenfranchised because they are unable to post their completed ballot papers before election day. Given that there are at least 10-15 deliveries per run, with 2-3 voters per delivery, up to 250 votes could be disenfranchised.<sup>180</sup>
- 2.190 As part of the 1996 federal election inquiry report, the Committee recommended that the relevant parts of the Electoral Act be amended to allow the witness' signature to be used to determine the admissibility of postal votes.<sup>181</sup> The government supported this recommendation in its response to that report, however this support has not resulted in a proposed amendment to the Electoral Act.

### Recommendation 27

- 2.191 **That paragraph 7 of Schedule 3 of the *Commonwealth Electoral Act 1918* and paragraph 7 of Schedule 4 of the *Referendum (Machinery Provisions) Act 1984* concerning the postmarking of postal vote envelopes be amended, so that the date of the witness's signature is instead used to determine if a postal vote was cast before the close of polling if there is no post mark or if the post mark is illegible. The witnessing portion of the postal vote envelope should specify all the elector's details being attested to, and should make clear that it is an offence for a witness to make a false declaration.**
- 2.192 The Liberal Party recommends that:
- ..in recognition of the increasing and legitimate role of electronic communications, the party believes provisions should be made to clearly indicate that postal vote applications are acceptable in electronic form, for example, by fax or by some other electronic form.<sup>182</sup>

---

179 Submissions p S2431 (AEC)

180 Submissions p S1097 (T.Lawler MP, Member for Parkes)

181 Joint Standing Committee on Electoral Matters. 1997. *The Federal Election: Report of the Inquiry into the conduct of the 1996 Federal Election and matters related thereto*. Canberra, AGPS, pp 57-58.

182 Submissions p S777 (Liberal Party)

2.193 In response, the AEC points out that postal vote application forms can be received by fax, but also notes that faxing a large number of postal vote applications to a Divisional office in the short time frame of an election will present some difficulties.<sup>183</sup> The Committee believes that the AEC should remain in step with the adoption of technology such as faxes by the general public, and should take into account the possibility of increased fax usage in election planning.

#### Distribution of postal vote application forms

2.194 Prior to a federal election there is a wide distribution of postal vote application forms by political parties across Divisions.

2.195 The AEC is concerned that:

...instead of being a fall back facility for those electors who might experience difficulty in attending a polling booth on polling day, postal voting may be evolving into the method of voting of first choice because of the undoubted convenience...<sup>184</sup>

2.196 Postal voting statistics show an increase in postal voting from 2.87% of votes at the 1993 federal election to 4.22% at the 1998 federal election (see Table 2.2).

2.197 The AEC is concerned that the forms distributed by political parties do not include the relevant information relating to who is eligible for a postal vote as this information is not contained in the approved AEC form. This means that many electors who receive postal vote application forms from political parties may not appreciate the qualifications for postal voting, and therefore may apply for a postal vote while still being able to attend a polling booth on election day.<sup>185</sup>

2.198 To prevent ineligible postal voting in future, the AEC will be gazetting a new postal vote application form that includes the relevant advisory information on postal vote qualifications, ensuring political parties reproduce not only the postal vote application but also the relevant qualifications for postal voting.<sup>186</sup>

2.199 The AEC states it will also consider making the 'approved' postal vote application form similar to the postal vote application Form 13 approved by the New South Wales Electoral Commissioner for the purpose of New South Wales State elections. This involves the applicant ticking off the

---

183 Submissions pp S1187-S1188 (AEC)

184 Submissions p S396 (AEC)

185 Submissions p S398 (AEC)

186 Submissions p S399 (AEC)



reason why the applicant requires a postal vote from a list of the permitted reasons in the legislation.<sup>187</sup>

### **Recommendation 28**

**2.200 That the AEC modify its postal voting form so that voters are requested to tick off the reason why they require a postal vote from a list of permitted reasons in the legislation.**

2.201 This recommendation is not intended to disenfranchise those voters who fail to indicate the reason they require a postal vote. Failure to indicate a reason for requiring a postal vote should not result in the disqualification of the vote.

2.202 The Committee recognises that the wide distribution of postal vote application forms may encourage ineligible voters to use the option of postal voting. The Committee will monitor the effect the AEC's proposal has on the levels of postal voting in future elections and recommend further action as necessary.

#### **Potential multiple voting by postal voters**

2.203 The wide distribution of postal vote application forms has resulted in the AEC receiving a number of multiple postal vote applications from the same applicant.<sup>188</sup>

...This results in a significant increase in administrative workload for Divisional staff to ensure that they issue only one set of ballot papers and a declaration envelope to each postal vote applicant.<sup>189</sup>

2.204 If more than one postal vote application is received from one elector, the Electoral Act does not explicitly allow Divisional staff to decide not to issue another set of ballot papers. The AEC recognised this problem early in the election period and issued administrative instructions to contact all those who applied for more than one postal vote and advised them of the penalties for multiple voting.<sup>190</sup> The AEC recommends that the Electoral Act be amended to require Divisional staff to consult with multiple postal

---

187 Submissions p S399 (AEC)

188 Submissions p S399 (AEC)

189 Submissions p S396 (AEC)

190 Submissions p S399 (AEC)

vote applicants in order to avoid issuing multiple sets of postal voting material.<sup>191</sup>

- 2.205 The AEC suggests that another possible remedy to multiple voting of this kind would be to amend the Electoral Act to disallow, at the preliminary scrutiny stage, any second or more declaration votes received from one elector. Such a remedy might have the additional benefit of ensuring that the political parties return forms forwarded to them much more quickly, to ensure that their form is the one recognised.<sup>192</sup>
- 2.206 The Committee believes a better solution would be for the AEC to issue one set of postal ballot papers and discard any second or subsequent application form request. Replacement of spoilt, lost or undelivered postal ballot papers is dealt with at Recommendation 26 above.

### **Recommendation 29**

- 2.207 That the AEC only issue one set of postal ballot papers and discard any second or subsequent application form request except where the second or subsequent request is to replace spoilt, lost or undelivered ballot papers on written request from the elector as set out in Recommendation 26.**

#### **Return of postal vote application forms to a political party**

- 2.208 Electors may be misled into believing that the postal vote application form is returned directly to the AEC, because some political parties do not make it clear on the return address envelope provided with the form that the address is for a political party. The AEC pointed out that any elector who completes the application form and returns it to the party office address is providing the party with personal details, and possibly an indication of political support. Postal vote applicants may do this unknowingly.<sup>193</sup>
- 2.209 Mr Cox also raises the practice of returning postal vote application forms to a political party and recommends that this be prohibited. He argues that:

...This would reduce the time involved in turnaround of postal voting material, reduce the chance of disenfranchisement of voters, reduce the invasion of privacy and associated security

---

191 Submissions p S400 (AEC)

192 Submissions p S400 (AEC)

193 Submissions p S396 (AEC)

risks, and reduce the prospects of misconception about AEC alignment.<sup>194</sup>

- 2.210 The AEC points out it is not privy to the use made of the personal information provided to political parties, but it assumes that political parties record the personal details contained on these forms, which are then added to enrolment databases to refine political campaigning.<sup>195</sup> In order to make it absolutely clear where postal vote application forms will be returned to, the AEC recommends that reply paid envelopes supplied by political parties with postal vote application forms contain the name of the political party on the return address.<sup>196</sup>
- 2.211 The Committee supports such a requirement.

### Recommendation 30

- 2.212 That reply paid envelopes supplied by political parties with postal vote application forms that are addressed to return to the political party, the name of the political party be part of the address on the envelope.**

#### Disenfranchisement of postal vote applicants

- 2.213 Returning the postal vote application forms to a political party office creates the possibility that the voter could be disenfranchised if the party does not forward the form to the AEC with appropriate haste.<sup>197</sup> The AEC is concerned that:
- ...despite the reassurances regularly received from political parties engaged in this practice, there is a real risk that political parties holding large numbers of postal vote applications may lose or misplace some or all of these, or send them to the AEC after the deadline for the receipt of postal vote applications, and thus disenfranchise some voters...<sup>198</sup>
- 2.214 The AEC has evidence that 174 postal voters were disenfranchised in the 1998 federal election apparently because their political party postal vote applications were not received in time to be processed.<sup>199</sup> There are also numerous instances where it was necessary for AEC staff to remind

194 Submissions p S101 and Transcript pp 100-102 (B.Cox)

195 Submissions pp S396-S397 (AEC)

196 Submissions p S401 (AEC)

197 Submissions p S160 (P.Hyland)

198 Submissions p S397 (AEC)

199 Transcript p 420 (AEC)

political parties that they needed to supply their postal vote application forms by a particular time in order not to disenfranchise voters.<sup>200</sup>

- 2.215 On a related concern for the AEC, political parties tend to send bundles of applications through to AEC offices at unpredictable times. Rather than receiving a steady stream of applications, it is the AEC's experience that political parties deliver the forms at unpredictable times in large numbers, generating inefficiencies in the processing of these forms.<sup>201</sup>
- 2.216 In response, the Committee notes that all experienced political parties know the importance of having a good postal vote machine. It is not entirely clear from the evidence that the political parties are wholly responsible for the 174 disenfranchised postal voters. It is possible that some were disenfranchised as a result of administrative errors by the AEC. In the absence of further evidence, the Committee urges both the AEC and the political parties to improve their processing of postal vote application forms.

## Mobile polling

- 2.217 Mobile polling involves the transportation of polling booths to locations where voters would normally be unable to access a standard polling booth, including hospitals and prisons, in the 12 days up to and including polling day. It has long been the accepted practice that mobile polling is conducted in remote areas of Australia, and that these mobile polls service mainly Aboriginal voters who have language and literacy difficulties.<sup>202</sup>
- 2.218 Remote mobile polling is conducted by AEC Remote Mobile Polling Teams, which are under the supervision of a team leader. The team leader is also the Presiding Officer for the purposes of polling, although they are more often known as Officers in Charge (OICs).<sup>203</sup>
- 2.219 Generally speaking, the conduct of remote polling is considered to be of a high order, and is praised even by those participants to the inquiry such as the NTCLP, who find fault with particular Remote Mobile Polling Teams. The NTCLP states that:

---

200 Submissions p S402 and Transcript p 39 (AEC)

201 Submissions p S397 (AEC)

202 Submissions p S385 (AEC)

203 Submissions p S1154 (AEC)

...most scrutineers have high praise for the efficiency and cooperation received from both the AEC and mobile teams. The difficulty seems to be limited to a few specific people.<sup>204</sup>

- 2.220 In addition, the AEC states that it received no complaints about the conduct of remote polling from those voters targeted by remote polling.<sup>205</sup>

### **Remote mobile polling team 16, Northern Territory**

- 2.221 Most of the discussion in relation to remote polling has been focussed on Remote Mobile Polling Team 16 in the Division of the Northern Territory. This Team was tasked with conducting mobile polling in the remote communities to the West of Alice Springs. The inquiry has been a forum for ongoing debate by the participants and parties interested in the conduct of this Team. At issue are the schedule undertaken by this Team; polling statistics collected by the OIC; and the possibility that polling took place while some AEC officials were absent. Issues relating to assisted votes are considered in Chapter 3.

### **Schedule**

- 2.222 Dealing first with the scheduling problems,<sup>206</sup> it is clear that given the numerous conflicting descriptions of which locations were visited and when, a precise order of events is impossible to determine. What follows is the Committee's best estimate based on evidence gathered.
- 2.223 By the admission of the OIC, Remote Mobile Polling Team 16 was late in reporting to certain polling places; booths were not set up in some polling places because there were no electors present; and some of those polling places did not stay open the advertised length of time.<sup>207</sup> The AEC reports that the itinerary for Mobile 16 included 16 polling places, 14 of which were visited. Of the two polling places not visited, it was known that there were no electors present at one, and there was reliable information that the second was a risk to the physical safety of the team.<sup>208</sup>
- 2.224 Both the NTCLP and the AEC agree that on Monday 16 September 1998 the team visited Iwupataka (Jay Creek), West Waterhouse and Wallace

---

204 Submissions p S554 (NTCLP)

205 Submissions p S1153 (AEC)

206 Scheduling problems for remote mobile polling teams were also identified by Mr Barry Wakelin MP, in his Division of Grey, see Transcript p 7.

207 Submissions p S1156 (AEC)

208 Submissions p S1156 (AEC)

Rockhole.<sup>209</sup> On Tuesday, the Team was at Hermannsburg all day. On Tuesday night, the OIC indicated that all scrutineers should assemble the next morning to discuss the itinerary for Wednesday.<sup>210</sup> On Wednesday morning, the OIC set up the polling booth in Hermannsburg and intended to stay until 2.30pm.<sup>211</sup> The AEC claim that the OIC had received information that there were no voters present at the location scheduled for Wednesday morning, New 8 Mile. As a number of people from Hermannsburg had not voted, the OIC determined to remain there for the morning.<sup>212</sup>

- 2.225 Of the remaining locations scheduled, the NTCLP claim that Intyamangama, Ntakarra and Ilkarilalama were missed altogether, while Red Sandhill, Kaporilya, Lyiltjarra and Gilbert Springs were visited, but mostly at times contrary to the schedule, and no polling place was established.<sup>213</sup>
- 2.226 On the other hand, the AEC claims that Intyamangama, Kaporilya, Ilkarilalama, Lanjakwarra and Gilbert Springs were visited, but no votes were taken either because no one was present or the voters had cast their votes elsewhere. Ntakarra was not visited because at the time a number of the community were drunk and it was considered dangerous to visit. The AEC claims that polling took place normally at Tjamangkurra, Arkanputa, Red Sandhill, Intjarrtnama and Lyitjarra.<sup>214</sup>
- 2.227 The OIC of Mobile Polling Team 16 has admitted that the schedule was significantly deviated from.<sup>215</sup> Whether these deviations were for legitimate reasons or not is the issue in question. The AEC explained that there are generally good reasons for variations to remote polling schedules, and that changes to the schedule are always made according to established procedure.<sup>216</sup> The OIC, during the hearing in Alice Springs, indicates that on at least one occasion, the locations scheduled for the day were visited in reverse order for geographical reasons.<sup>217</sup> The Committee considers that this is not necessarily a good reason for varying the schedule. It is not clear from the evidence whether such changes were approved by the AEC or not.
- 

209 Submissions p S1156 (AEC)

210 Transcript p 298 (E. Williams)

211 Submissions p S1370 (NTCLP)

212 Submissions p S1156 (AEC)

213 Submissions p S1378 (NTCLP)

214 Submissions p S1157 (AEC)

215 Transcript p 301 (E. Williams)

216 Submissions p S1182 (AEC)

217 Transcript p 301 (E. Williams)

## Record keeping

- 2.228 The OIC of each Remote Mobile Polling Team is required to keep figures on relevant details of polling conducted by the Team. On Team 16, votes were not correctly recorded for each community visited resulting in irregularities in the manual record of votes cast at several of the sites visited.<sup>218</sup>
- 2.229 Because of the irregularities in the manual record of votes cast along the route of Remote Mobile Polling Team 16 there was a delay in the production of Territory wide statistics on votes cast at each mobile polling place.<sup>219</sup> The discrepancy was detected by representatives of the NTCLP after they were able to obtain an early, inaccurate, version of the Northern Territory Remote Mobile Polling Team statistics.<sup>220</sup>
- 2.230 While both the AEC and the NTCLP agree that the discrepancy in the figures does not mean that the actual voting process was improper,<sup>221</sup> the Committee is still concerned that discrepancies of this sort took place. Situations like this bring into question the professional reputation of the AEC, which the Committee considers should be beyond question.

## Palm Valley tour

- 2.231 The final issue of contention relates to the possibility that polling took place while some of the AEC officials were on a tour of a local tourist attraction, Palm Valley. The NTCLP appears to be claiming that the tour took place on the last day of polling while the team was at Hermannsburg. The NTCLP allege that while the two AEC officials were on the tour, the OIC opened the polling booth at Hermannsburg and received an additional 84 votes.<sup>222</sup>
- 2.232 According to the OIC, the tour in fact took place on the penultimate day of polling. The OIC claims that polling took place up to 2.30pm, when polling was closed. All the ballot boxes were sealed and put into the vehicle, but were not signed off. When the staff returned from the tour, they were asked to sign off. The OIC explained that the 84 additional

---

218 Submissions pp S713 (Senator the Hon. G.Tambling), S1173 (AEC) and Transcript pp 200-201 (Senator the Hon. G.Tambling)

219 Submissions p S1174 (AEC)

220 Transcript p 211 (K.Heisner)

221 Submissions pp S1173 (AEC) and S1391 (NTCLP)

222 Submissions p S1546 (NTCLP)

votes alluded to by the NTCLP were declaration votes collected from all locations the Team visited.<sup>223</sup>

## Conclusion

2.233 The overall picture in relation to the conduct of Remote Mobile Polling Team 16 is one of a Team poorly run. The Committee believes a series of errors in the conduct of this Team have generated an impression of mismanagement, however unwarranted. As a matter of balance, the AEC has indicated that the OIC of Team 16 found the NTCLP scrutineers attending Team 16 to be intimidating.<sup>224</sup> While this is entirely possible given that some NTCLP scrutineers have revealed they are unclear about voting practices for federal elections,<sup>225</sup> it is not an explanation for apparent poor management by the AEC.

## Recommendation 31

2.234 **That the AEC review its mobile polling arrangements and training to ensure good management of mobile polling teams.**

## Problems on other mobile teams

2.235 Scheduling problems with mobile polling teams were also apparent in the Division of Gwydir, where Pauline Hanson's One Nation Party complained that the schedule they received was inaccurate.<sup>226</sup>

2.236 The DRO for Gwydir has reported that the mobile polling schedule provided to candidates did contain incorrect information. All candidates received the incorrect schedule and the error was not detected until late in the week of mobile polling, by which time it was too late to contact candidates. On 12 November 1998 the Australian Electoral Officer for New South Wales wrote to the Gilgandra Branch of the Pauline Hanson's One Nation Party and apologised for the error.<sup>227</sup>

2.237 In order to uphold the integrity of the electoral process and facilitate the attendance of scrutineers at mobile booths, particularly to observe assisted

---

223 Transcript pp 299-300 (E.Williams)

224 Submissions p S1157 (AEC)

225 Submissions p S1156 (AEC)

226 Submissions pp S562 (Pauline Hanson's One Nation Party Gilgandra Branch) and S693 (M.Roberts)

227 Submissions pp S1170-S1171 (AEC)



voting, the Liberal Party believes the AEC should make seats available for party scrutineers of registered political parties on aircraft used to travel to the location of the mobile booths.<sup>228</sup> The AEC objects to the provision of free travel for the scrutineers of political parties. The *AEC Remote Mobile Polling Procedures Manual* makes it clear that How To Vote cards provided by candidates must be displayed by AEC mobile polling staff in a prominent position outside the boundary of remote polling places during polling hours, and must be collected up after the close of the poll.<sup>229</sup> The Committee believes that the AEC position is justified on the basis of protecting the independence and integrity of the vote, and the AEC should not be responsible for providing transport for party scrutineers.

---

228 Submissions p S780 (Liberal Party)

229 Submissions p S1189 (AEC)



## Election day

### Polling booths

- 3.1 The distribution of polling booths is reviewed after each election and after a redistribution of electoral boundaries. The benchmark for appointing a polling place in metropolitan areas is 1,000-1,200 votes and for rural areas is 200 votes. When any polling place is abolished, the benchmark is 100 votes, but the Australian Electoral Commission (AEC) also considers other factors such as alternative facilities and commonality with the location of state polling booths.<sup>1</sup> As a result of this process, 7,775 polling places were gazetted for the 1998 federal election.<sup>2</sup>
- 3.2 The AEC determines the location of polling booths by taking into account a mixture of historical factors, demographics, electoral boundaries, analysis of recent election voter trends and special circumstances that might apply at a particular election.<sup>3</sup>
- 3.3 Polling places are usually appointed and gazetted only once during an electoral cycle: in the immediate lead up to an election so as to allow for changes to the demographics of the voter catchment and any late developments in the availability of booth sites. Under s80(2) of the Electoral Act, a polling place cannot be abolished after the issue of writs for an election.<sup>4</sup> The Committee believes there should be some scope for appealing the decisions on the location of polling booths.

---

1 Submissions p S1166 (AEC)

2 Australian Electoral Commission. 1999. *Behind the Scenes: The AEC's 1998 Federal Election Report*, Canberra, Paragon Printing, p 22.

3 Submissions p S1246 (AEC)

4 Submissions p S2504 (AEC)

**Recommendation 32**

- 3.4 **That the *Commonwealth Electoral Act 1918* be amended to allow registered political parties to appeal AEC decisions on the location of polling places.**
- 3.5 To ensure that each polling place is properly equipped, Divisional office staff use the computerised Polling Place Staffing Estimates System, which provides an estimated number of electors by Census Collection Districts (CCD). The system compares voter turnout and enrolment at the last election with the CCD data to produce an estimated number of votes. All polling places receive votes for a number of CCDs which make up their catchment area.<sup>5</sup>
- 3.6 The system retains ordinary and declaration vote statistics for the previous three federal elections. Using the system estimates, the Divisional Returning Officer (DRO) is able to ensure that each polling booth is properly equipped, including making decisions about adjustments to staffing levels.<sup>6</sup>
- 3.7 The AEC has a set procedure for all administrative matters relating to the conduct of the polling booth:
- The AEC provides all Divisional Returning Officers with a comprehensive up to date manual for the conduct of elections, the *Divisional Office Procedures Elections Manual*, which is grounded in the Electoral Act, as well as practical experience and knowledge gained over the years. The manual contains detailed procedures to be followed in all administrative matters relating to elections....Polling officials attend a comprehensive training program and are provided with an Instructions Manual which outlines the various election tasks and their responsibilities during the hours of polling. Election casuals also receive training in their tasks from Divisional office staff.<sup>7</sup>
- 3.8 During the inquiry, the Committee received complaints about the distribution of polling booths from the Australian Labor Party (ALP)

---

5 Submissions p S1137 (AEC)

6 Submissions p S1137 (AEC)

7 Submissions p S1137 (AEC)

Charters Towers Branch; Mr Barry Wakelin MP, Member for Grey; and the Liberal Party.<sup>8</sup>

- 3.9 In relation to the ALP Charters Towers Branch's concerns, the AEC indicates it will monitor enrolment changes in the area and will allocate a new polling booth accordingly.<sup>9</sup> In relation to Mr Wakelin, the AEC states that the location of three polling booths in Port Pirie had to be changed because the previous locations were either unavailable or unsuitable.<sup>10</sup> Both the Liberal Party and Mr Wakelin's complaints about the placement of a Division of Grey polling booth at Salisbury outside the Division of Grey are accepted by the AEC.<sup>11</sup>

## Polling booth concerns

- 3.10 The Committee also received a complaint about the staffing levels at polling booths from Mr Syd Stirling MLA, Member for Nhulumbuy in the Northern Territory.<sup>12</sup> In relation to Mr Stirling's concerns, the AEC reports that staffing at the Nhulumbuy polling booth was increased on the basis of the Northern Territory Statehood Referendum.<sup>13</sup>
- 3.11 With regard to the resourcing of polling booths at the 1998 federal election, the AEC indicates that in some areas the enhanced allocations of materials were insufficient, and the electoral forecasting system for the resourcing of polling places is now under active review so that school holidays and sporting events can be better accommodated.<sup>14</sup>
- 3.12 Issues relating to the staffing of polling booths are considered in Chapter 2.
- 3.13 In addition to difficulties with the AEC's management of polling booths a number of submissions deal with the behaviour of party workers at polling booths, including:
- Mr D Ogle, who is concerned about a party canvassing for postal votes outside a polling booth and potentially misleading voters into believing they were from the AEC;<sup>15</sup>

---

8 Submissions pp S635 (ALP Charters Towers Branch), S723-S724 (B.Wakelin MP, Member for Grey), S777 (Liberal Party), and Transcript pp 2-3 (B.Wakelin MP, Member for Grey)

9 Submissions p S1166 (AEC)

10 Submissions p S1177 (AEC)

11 Submissions p S1179 (AEC)

12 Submissions p S6 (S.Stirling MLA, Member for Nhulumbuy)

13 Submissions p S1133 (AEC)

14 Submissions p S1192 (AEC)

15 Submissions p S192 (D.Ogle)

- Ms Mishka Buhler, who complains about the placement of signs at the polling booth next to her home at 4.30am on election day;<sup>16</sup>
  - Mr James Dwyer, who points out that a thirteen year old boy had been left unsupervised to hand out How To Vote cards at a polling place in the Division of Blair;<sup>17</sup> and
  - Mr Ken Briggs and Mr John King, who complained about the treatment of people accepting One Nation How To Vote cards at the hands of other party workers.<sup>18</sup>
- 3.14 It is not unexpected, given the large number of polling booths, that a certain number of voters will be disgruntled. The Committee trusts the AEC will bear in mind the concerns of those listed above in its future planning for the distribution and administration of polling booths.
- 3.15 As indicated at paragraph 2.16, there were a lot of cultural and sporting events being held at the time of the 1998 federal election, requiring special polling arrangements and facilities. The ALP, in its submission, expresses a concern that inconsistent polling arrangements were made in relation to sporting and cultural events, and little effort was made to inform people attending sporting and cultural events of polling arrangements. While the ALP recognises the need for AEC discretion in how it deals with such events, the ALP believes that some formal guidelines should be adopted to ensure consistency in decision making.<sup>19</sup>
- 3.16 In response, the AEC points out that there are significant reasons why it took the course of action it did in relation to these special events. Specifically, these reasons relate to the practical and legal complications of charging for admission and the sale of alcohol.<sup>20</sup> While the Committee supports the AEC's reasons for its decisions regarding polling places in particular instances, the Committee feels that formal guidelines would be helpful in this area.

---

16 Submissions p S637 (M.Buhler)

17 Submissions pp S642-S643 (J.Dwyer)

18 Submissions pp S670 (K.Briggs) and S698 (J.King)

19 Submissions p S787 (ALP)

20 Submissions p S337 (AEC)

**Recommendation 33**

- 3.17 **That the AEC develop guidelines in relation to the provision of special polling facilities, and that these guidelines be a disallowable instrument.**

**Ballot paper shortages**

- 3.18 The timing of the election resulted in a large number of voters being away from their normal polling booths on election day. The AEC reports that the random relocation of voters throughout the country meant that estimates made by the AEC of the requirement for ballot papers were in some instances inadequate. In a number of cases, polling booths ran out of ballot papers. Where these shortages occurred ballot papers were photocopied and declaration envelopes hand prepared until more materials were available.<sup>21</sup>
- 3.19 The Northern Territory Country Liberal Party (NTCLP) brought to the attention of the Committee the fact that some ballot papers were being admitted to the count that were photocopied and had not been signed by the issuing officer.<sup>22</sup> This is a matter of concern to the Committee. The AEC indicate that, while s209(3) of the *Commonwealth Electoral Act 1918* (Electoral Act) requires ballot papers to be of a certain colour and s215 of the Electoral Act requires that a ballot paper be signed by the issuing officer, s268(2) of the Electoral Act provides that the DRO can admit ballot papers that are in question to the count.<sup>23</sup>
- 3.20 Mr Kerry Heisner, ex Australian Electoral Officer for the Northern Territory, indicates that in his experience, photocopied and unsigned ballot papers have been admitted to the count provided the DRO is satisfied as to the circumstances in which the ballot paper is received.<sup>24</sup>
- 3.21 The concerns of the Committee on this issue are best expressed by Mr Forrest, at the hearing at which Mr Heisner appeared.

...I am a little concerned by the admission by the Electoral Commission that they have admitted photocopied and unsigned ballot papers. I can accept that, if there is a shortage, you need to photocopy extra ballot papers and they might not be green or red

21 Submissions p S379 (AEC)

22 Submissions pp S553 and S1548 (NTCLP)

23 Submissions p S1164 (AEC)

24 Transcript pp 212-213 (K.Heisner)

or whatever, but to have them counted when there is no initial on them is a real bother...<sup>25</sup>

- 3.22 The Committee is of the opinion that photocopied ballot papers should be initialled in order to be considered formal. Photocopied ballot papers should also be subject to the same reconciliation checks as normal ballot papers during the count.

### **Recommendation 34**

- 3.23 **That the *Commonwealth Electoral Act 1918* be amended to ensure that, where a photocopied ballot paper is issued, the issuing officer must initial the ballot paper in order for it to be considered formal.**

### **Railway Side polling booth – Alice Springs**

- 3.24 The administration of the Railway Side polling booth in Alice Springs was the focus of considerable attention during the inquiry. Three matters are at the basis of this attention: firstly, the process used by the AEC to determine the location of the polling booth; secondly, the adequacy of the physical location of the booth; and finally, the administration of the booth. The Committee inspected this polling booth on 16 August 1999.
- 3.25 Over 1,200 Aboriginal people live in Town Camps around Alice Springs,<sup>26</sup> of which 700 are enrolled to vote.<sup>27</sup> There is very little quantitative evidence as to the participation rate of these voters at previous electoral events, but the anecdotal evidence suggests the turnout was very low.<sup>28</sup> During the 1998 federal election, it is estimated that 350 town camp residents voted. The gazettal of the Railway Side polling booth was part of the AEC's response to the low participation rate.
- 3.26 Community services to Town Camp residents are provided by the Tangentyere Council. In this capacity the Council has regularly assisted the AEC to target Town Camp residents. Despite these efforts, the Council claims there has been no obvious improvement in the participation rate of Town Camp residents over time.<sup>29</sup>

---

25 Transcript p 199 (J.Forrest MP, Member for Mallee)

26 Submissions p S1629 (Tangentyere Council)

27 Transcript p 275 (Tangentyere Council)

28 Submissions p S1624 (Tangentyere Council)

29 Submissions pp 1624-S1625 (Tangentyere Council)



- 3.27 To explain the difficulties with participation, the Council uses the concept of cultural remoteness. Cultural remoteness means that geographical proximity to a service does not mean that service can be easily accessed. The Council claims the discomfort of being in the different cultural environment in which services are located inhibits the access of Town Camp residents to those services.<sup>30</sup> Apart from Yirara College, most polling places are in locations that Aboriginal people rarely frequent and may be uncomfortable with.<sup>31</sup>
- 3.28 To resolve the accessibility problems discussed above, the AEC proposed to conduct mobile polling in the Town Camps.
- For the 1998 federal election...the Australian Electoral Officer for the Northern Territory decided mobile polling should be introduced for the town camps in Alice Springs, ....mobile polling would be an effective way of ensuring those people with language and literacy problems were able to discharge their duty to vote with appropriate assistance.<sup>32</sup>
- 3.29 In addition, the AEC had concerns about providing adequate assistance to Aboriginal electors in a situation where there were three ballot papers, including the Northern Territory Statehood Referendum ballot paper.<sup>33</sup>
- 3.30 The AEC approached the Council to provide assistance in ensuring the mobile polls were effective.<sup>34</sup> The Council had some reservations about the proposal devised by the AEC, largely based on the fact that the camps often contain people from separate language groups who would be required to mix in the Town Camps under the proposal.<sup>35</sup>
- 3.31 Following a complaint by the NTCLP, the AEC obtained legal advice that the definition of remote mobile polling might not be determined by a court to include an urban location such as Alice Springs.<sup>36</sup> As a result, mobile polling for Town Camps was cancelled.
- 3.32 According to the Tangentyere Council, the Council's Executive Director devised the idea that it might be possible to replace the proposed mobile polls with a static booth at the Tangentyere Council's resource centre in Elder Street, Alice Springs on the basis that the resource centre is a focal

---

30 Submissions pp S1626-S1629 (Tangentyere Council)

31 Submissions p S1629 (Tangentyere Council)

32 Submissions p S386 (AEC)

33 Transcript p 216 (K.Heisner)

34 Transcript p 216 (K.Heisner)

35 Transcript p 273 (Tangentyere Council)

36 Submissions p S386 (AEC)

point for the Town Camp community.<sup>37</sup> The AEC accepted this suggestion and this site became known as the Railway Side polling booth.

3.33 The physical state of the Railway Side polling booth was not of the standard expected of AEC polling booths.<sup>38</sup> The polling booth was located in a small class room close to the Fogarty Street entrance of the Tangentyere Council resource centre. Mr Joe Beath, Assistant DRO for Alice Springs for the 1998 federal election, indicates that:

In hindsight, I think the polling place was a bit on the small side. When I inspected it last year in the lead-up to the election, I was advised that the room would be empty – that there would be no furniture left in it. Instead, however, they pushed some furniture back and put a couple of white boards in front of it, so restricting our space somewhat...<sup>39</sup>

3.34 In that space, the AEC provided two ordinary issuing points, one declaration issuing point and 10 or 12 voting screens. In addition to AEC staff a number of authorised scrutineers were in the polling booth, putting space at a premium. As electors were being bussed into the polling booth from various locations, there were occasions when people were forced to queue for some time. Voters were brought through one door and exited via another after they had voted. Election day was quite warm, and the air conditioning was not working because the doors were opened.<sup>40</sup>

3.35 The overall impression gathered by the Committee is one of an inappropriate location for a polling booth.

3.36 The Council recognises that the polling booth was poorly located, and indicate that, should a polling place be gazetted at the Council again, a more expansive area with easier access should be considered for the polling booth.<sup>41</sup>

3.37 In terms of the conduct of polling at the Railway Side polling booth, accounts vary between participants. The Council indicates that polling was conducted in a general environment of cooperation and harmony.<sup>42</sup> Notwithstanding this, the Council had some concerns about the events of the day. The first concern was the presence of a number of Members of the Legislative Assembly of the Northern Territory as scrutineers for the

---

37 Transcript p 273 (Tangentyere Council)

38 Submissions p S547 (NTCLP)

39 Transcript p 245 (J.Beath) this view is also supported by K.Heisner (Transcript p217)

40 Transcript p 246 (J.Beath)

41 Transcript pp 250 (J.Beath) and 269 (Tangentyere Council)

42 Transcript p 286 (Tangentyere Council)

NTCLP, described by a representative of the Council as “the heavy artillery.” The Council argues that a presence of this sort might have the effect of heightening tensions at the booth.<sup>43</sup>

- 3.38 A second issue is the taking of photographs by the NTCLP scrutineers. The Council point out that photographs are viewed with extreme cultural sensitivity by Aboriginal people, and that taking photographs of the polling booth had the potential to dramatically increase tension.<sup>44</sup> Yet as the Committee Chairman pointed out during the hearing in Alice Springs, this is not an unusual activity for party scrutineers.<sup>45</sup> The Officer in Charge (OIC) of the polling booth also indicated that this was a legitimate activity, but expressed some concern that permission was not obtained before photography took place.<sup>46</sup>
- 3.39 One event about which both the NTCLP and the Tangentyere Council share a concern was the activity of a drunk elector at the polling booth. The drunk elector entered the polling place on a number of occasions, and during one of these visits, allegedly assaulted an NTCLP scrutineer.<sup>47</sup> On his last visit, the elector was arrested by the police. The presence of the police in turn caused a concern for the Council.<sup>48</sup> The AEC has attempted to absolve its responsibility for the alleged assault by stating that it took place outside the 6 metre limit of the polling booth, and therefore was not the responsibility of the AEC.<sup>49</sup>
- 3.40 The Committee is of the view that an inebriated elector should not have been allowed anywhere near a polling booth. The difficulties created by this elector might easily have been prevented by either the Tangentyere Council preventing his transport to the polling booth until he was sober, or the OIC of the polling booth making use of s348 of the Electoral Act to control his behaviour.
- 3.41 The arrangements for the setting up of the polling booth is another issue of contention for the NTCLP. Scrutineers for the NTCLP at the booth indicate they came to an arrangement with the Council about access to the polling place at 7am on election day in order to set up before polling began at 8am. The NTCLP scrutineers indicate that they were not allowed

---

43 Transcript p 287 (Tangentyere Council)

44 Transcript pp 287-288 (Tangentyere Council)

45 Transcript p 288 (G.Nairn MP, Member for Eden-Monaro)

46 Transcript p 296 (E.Williams)

47 Transcript pp 142-143 (NTCLP)

48 Transcript p 286 (Tangentyere Council)

49 Submissions p S1159 (AEC)

access at the agreed time and that the ALP scrutineers had been allowed access earlier.<sup>50</sup>

- 3.42 Access to the polling booth from the Fogarty Street entrance is provided via a heavy security gate that would be impassible if locked. Mr Mike Bowden, Manager of Community Development at the Council, set up the ALP promotional material at the Railway Side polling booth early on election day. He indicates that:

I do not recall locking the gates...If the gates were closed they may have been closed by somebody after I left – somebody picking up a bus or something – because I left them open...<sup>51</sup>

- 3.43 A further issue for the NTCLP is the overall control of the booth by the OIC, and specifically, a number of clashes between the OIC and the NTCLP over the number of scrutineers in the polling booth. The NTCLP allege that the OIC allowed only two of its scrutineers into the polling booth.<sup>52</sup> The OIC for the polling booth indicates that she was prepared to allow six scrutineers into the polling booth at any time: two from each party and one each for the 'yes' and 'no' cases for the referendum.<sup>53</sup> Mr Beath, the AEC Assistant DRO for Alice Springs during the election, indicates that this was a sound decision<sup>54</sup> and given the size of the booth, the Committee concurs with Mr Beath. The OIC reports that on one occasion the NTCLP had up to six scrutineers in the booth.<sup>55</sup> If this claim is correct, it was not unreasonable for the OIC to request some of the scrutineers to leave. However, the NTCLP denies this was the case.<sup>56</sup>

- 3.44 As an informed observer a step removed from the events the views of Mr Beath are instructive. Mr Beath's description of the physical limitations of the polling booth have been noted above. With regard to the conduct of the polling booth on the day, Mr Beath visited the booth on eight occasions, more times than he visited any other booth in Alice Springs.<sup>57</sup> Mr Beath reports that, despite the possibility of tension:

...Every time I got there, things seemed to be working smoothly...<sup>58</sup>

---

50 Submissions p S1442 (NTCLP)

51 Transcript p 267 (Tangentyere Council)

52 Submissions p S1447 (NTCLP)

53 Transcript p 290 (E.Williams)

54 Transcript p 247 (J.Beath)

55 Transcript p 290 (E.Williams)

56 Submissions p S2064 (NTCLP)

57 Transcript p 246 (J.Beath)

58 Transcript p 249 (J.Beath)

- 3.45 The Committee concludes that over the entire day the conduct of the booth was probably not as disordered as the NTCLP believe. However, the AEC erred when it agreed to gazette a polling booth in the room provided by the Council, which was entirely unsuitable.
- 3.46 Passions about this polling booth run deep in both the NTCLP and the Tangentyere Council. In the opinion of the NTCLP, the polling booth was not an impartial venue but was directly linked to Aboriginal political activism where a large number of ordinary voters would prefer not to go.<sup>59</sup> To the Council, the booth represents an extension of the service it provides to the Town Camp community even though the Council does not have a role in selecting polling places.<sup>60</sup>
- 3.47 The real key to the success or failure of the Railway Side booth lies in whether it achieved the goal of increasing the participation rate of the Town Camp community. The booth took 356 ordinary and 67 declaration votes,<sup>61</sup> about a 60% turnout rate based on 700 enrolled electors. Representatives of the Council were satisfied with this number, claiming that Saturday is a bad day for voting for Aboriginal people, who tend to travel on that day.<sup>62</sup> Nevertheless, the Council is not able to indicate that this is an increase over the participation rate at previous electoral events.<sup>63</sup> Decisions by the AEC for additional polling places should be based on the criteria currently used and any new locations should only be accepted after diligent consideration of all alternatives.
- 3.48 The AEC has informally notified the Committee that the Railway Side polling booth was used for the Republic Referendum in November 1999, although on this occasion a different room on the Council premises was used. For the Republic Referendum, 175 votes were taken at the polling booth.<sup>64</sup>
- 3.49 The Committee accepts the principle of having a polling place to enhance the participation rate of a particular group, but this should be done appropriately. Due care should be taken to ensure appropriate separation between the AEC and the host of the polling place. In addition, polling booths should be located in adequate facilities. The AEC should also continue to monitor the participation rate to ensure that the allocation of the polling booth is having the desired result.

---

59 Submissions p S547 (NTCLP) and Transcript p 199 (Senator the Hon. G. Tambling)

60 Transcript p 275 (Tangentyere Council)

61 Submissions p S387 (AEC) and Transcript p 282 (Tangentyere Council)

62 Transcript p 282 (Tangentyere Council)

63 Transcript p 268 (Tangentyere Council)

64 AEC web page, [www.aec.gov.au/tallyroom/Northern\\_Territory\\_q1.htm](http://www.aec.gov.au/tallyroom/Northern_Territory_q1.htm).

## Voting on election day

- 3.50 At the 1998 federal election 95.34% of the 12,056,065 enrolled electors voted. This is slightly less than the 96.20% of enrolled electors who voted in 1996, but is in keeping with the broad trend of a turnout rate higher than 90% nationally since compulsory voting was first introduced for federal elections in 1924.<sup>65</sup>
- 3.51 The AEC points out that penalty notices for failing to vote are currently sent to the last known address of the voter. If there is no response, a second notice is sent. The current legislation indicates that this second notice must be sent to the address known at the time the first notice is sent out. Effectively, the second notice has to be sent to the same address as the first notice even if the DRO receives advice that the voter no longer resides at that address. The AEC is also limited to the use of Australia Post for the delivery of this second notice. The AEC recommends a technical amendment to the Electoral Act so that the penalty notice can be sent to the latest known address of the voter at the time of the dispatch of the penalty notice by whatever means possible. The AEC also recommends this be extended to enrolment objection and determination notices.<sup>66</sup> The Committee accepts this recommendation.

### Recommendation 35

- 3.52 **That the *Commonwealth Electoral Act 1918* be amended to allow the AEC to send penalty, enrolment objection and determination notices to the latest known address of the voter at the time of the dispatch of the notice.**

## Assisted voting

- 3.53 Any physically impaired, vision impaired or illiterate voter is permitted to have an assisted vote. An assisted vote can be made either by a friend appointed by the person requiring assistance, or by the Presiding Officer at the polling booth in the presence of any scrutineers who wish to observe the vote.<sup>67</sup> Under s234 of the Electoral Act the voter must satisfy the Presiding Officer of the impairment before an assisted vote is granted. This requirement to satisfy the Presiding Officer is vitally important to the

---

65 Submissions p S379 (AEC)

66 Submissions p S390 (AEC)

67 Submissions p S381 (AEC)

debate that ensued during the inquiry about the level of assistance provided to Aboriginal voters.

- 3.54 Mr Middleton, who suffers a vision impairment, made a submission to the inquiry about the inability of someone in his position to make a vote without assistance and the impact such assistance was having on his access to a secret vote.<sup>68</sup> The Committee sympathises with Mr Middleton and will continue to investigate methods to provide greater privacy to those who currently require an assisted vote.
- 3.55 Senator the Hon. Grant Tambling, Senator for the Northern Territory and Mr Barry Wakelin MP, Member for Grey and the NTCLP all express concerns about the process of providing assisted votes in remote communities.<sup>69</sup> Assisted voting appears to be the norm in remote communities, with up to 90% of votes cast being assisted.<sup>70</sup> The AEC indicates this level of assistance is routine, and would be expected for federal elections with two voting systems and large numbers of candidates.<sup>71</sup>
- 3.56 The problems that have been raised in relation to assisted voting in remote areas are that: a small number of people appear to be providing assistance to a large number of people;<sup>72</sup> scrutineers are providing assisted votes as friends;<sup>73</sup> and people who are not eligible for assistance are being assisted.<sup>74</sup>
- 3.57 During the inquiry the Committee conducted inspections of voting facilities in Maningrida, Bathurst Island and Alice Springs to investigate the difficulties inherent in conducting polling in regional and remote communities. At Maningrida and Bathurst Island, assisted voting was discussed at length during these inspections and the local communities expressed their strong support for the assisted voting process.
- 3.58 The NTCLP points out that in instances where large numbers of people were being assisted, only a handful of people were providing the

---

68 Submissions p S24 (J.Middleton)

69 Submissions p S544 and Transcript pp 140, 154 and 158-160 (NTCLP); Submissions p S2073 and Transcript p 6 (B.Wakelin MP, Member for Grey); and Transcript p 188 (Senator the Hon G.Tambling)

70 Submissions pp S544 (NTCLP), S711 (Senator the Hon. G.Tambling) and Transcript p 303 (E.Williams)

71 Submissions p S1154 (AEC)

72 Submissions p S546 and Transcript p 154 (NTCLP)

73 Submissions pp S544 and S1453 (NTCLP), S1369 (J.Polke) and S1164 (AEC)

74 Submissions p S1447 (NTCLP)

assistance.<sup>75</sup> In other words, one individual might be called on to assist a large number of those requesting assistance:

...At some polling booths in remote areas it appears to be standard procedure for assisted voters to receive assistance. This assistance is provided by the same person repeatedly...<sup>76</sup>

- 3.59 The AEC has stated that the same person may assist many voters in remote communities because there may be only a handful of people with the language and literacy skills who are capable of providing assistance, and these people are expected by the community to provide that assistance to as many other members of the community as are in need.<sup>77</sup>
- 3.60 As part of the 1996 federal election inquiry report, the Committee recommended that the relevant section of the Electoral Act be amended so that only a Presiding Officer or a polling official could provide an assisted vote on the basis that assistance provided by someone nominated by the voter could result in the vote being influenced.<sup>78</sup> This recommendation resulted in a proposed amendment as part of the *Electoral and Referendum Amendment Act 1998*, but was removed during the passage of the Act through the Senate.
- 3.61 The AEC opposes such a recommendation as it would result in scrutineers being able to observe every assisted vote. The AEC fears this situation might result in a decrease in participation and an increase in informal voting as those requiring assistance attempt to avoid being observed by scrutineers.<sup>79</sup>
- 3.62 In addition to a small number of people providing assistance to a large number, the NTCLP point out that the AEC is interpreting the Electoral Act to allow scrutineers to provide assisted votes as a friend of the voter.<sup>80</sup> The AEC readily concedes that it has been interpreting the Electoral Act in this way.<sup>81</sup>
- 3.63 Currently, s218(1) of the Electoral Act prohibits a scrutineer from interfering with or attempting to influence a voter within a polling booth or communicating with any person within a polling booth except to

---

75 Submissions p S546 and Transcript p 154 (NTCLP)

76 Submissions p S711 (Sen the Hon G.Tambling)

77 Submissions p S1155 (AEC)

78 Joint Standing Committee on Electoral Matters. 1997. *The Federal Election: Report of the Inquiry into the conduct of the 1996 Federal Election and matters related thereto*. Canberra, AGPS, p 46.

79 Submissions p S383 (AEC)

80 Submissions pp S544 and S1453 (NTCLP) and S1369 (J.Polke)

81 Submissions p S1164 (AEC)



discharge their duties. The AEC suggests that it might be possible to extend this prohibition to prevent scrutineers from providing an assisted vote.<sup>82</sup> The majority of the Committee agrees with this suggestion.

### Recommendation 36

3.64 **That the *Commonwealth Electoral Act 1918* be amended to explicitly prevent scrutineers from providing assisted votes.**

3.65 As indicated above, the Electoral Act states that a person must request an assisted vote if they require it, and the Presiding Officer or their appointee must be satisfied that the person requesting assistance is eligible for such assistance. The process for providing assistance is specified in the training provided to AEC staff:

Our training manuals make it quite clear that the presiding officer or polling official should not assume the person requires assistance. It requires them to be satisfied. The issue then is the means by which people become satisfied that someone requires an assisted vote. Those matters are considered in the training manuals. At the end of the day it comes down to judgement.<sup>83</sup>

3.66 In practice:

It is not entirely up to the voter to say that they must be assisted... it is a combination of factors which lead to a judgement being made by the presiding officer. It may be by trying to converse with someone and not making communication clear. The presiding officer then knows he or she will require some assistance in order to make the communication and to facilitate the casting of the vote...<sup>84</sup>

3.67 This evidence is backed up by evidence from the OIC of Remote Mobile Polling Team 16, who stated in relation to assessing whether someone needed assistance:

...If they look at the AEC person with a dumbfounded look then they are asked whether they want someone to assist them...<sup>85</sup>

---

82 Submissions p S1164 (AEC)

83 Transcript p 67 (AEC)

84 Transcript p 67 (AEC)

85 Transcript p 302 (E.Williams)

- 3.68 Overall, the NTCLP feels that the combination of the large numbers accessing an assisted vote, the small numbers providing assistance, and the permissive reading of the relevant section of the legislation by the AEC is creating a situation in which large numbers of voters could be having their votes influenced.<sup>86</sup> The NTCLP is even able to cite an example of a situation in which a voter who received assistance then assisted others.<sup>87</sup>
- 3.69 The AEC's response to this concern is that:
- ...It is undeniable that many Aboriginal voters in remote areas of the Northern Territory appear to cast their votes for one particular political party, and that the same political party is able to deploy scrutineers and party workers at many remote polling places, but this need not be taken as indicating undue influence or electoral fraud.<sup>88</sup>
- 3.70 The Committee has received evidence from some witnesses that in practice the method for assessing whether an individual requires assistance has become too permissive. The Committee recognises that some individuals will be very reticent to ask for assistance given the stigma attached to illiteracy, however, the Committee is of the view that those issuing assisted votes need to make greater efforts to assure themselves that the voter genuinely requires assistance.
- 3.71 Instances of higher than average assisted voting does occur in certain communities such as remote Aboriginal communities, communities of high ethnic and Non English Speaking background and communities with low levels of literacy. The Committee believes some method needs to be found to reduce the number of assisted votes without the risk of disenfranchising those genuinely in need.
- 3.72 A proposal to include photographs of the candidates on House of Representatives ballot paper received a favourable response during the Committee's inspection of remote communities, and was supported by all sides of politics during the hearings in Alice Springs<sup>89</sup> and Darwin.<sup>90</sup>
- 3.73 The Committee notes the AEC indicates that the inclusion of photographs of candidates on ballot papers is possible, but:

---

86 Submissions p S544 and Transcript p 154 (NTCLP); and Transcript pp 187-188 (Senator the Hon G.Tambling)

87 Submissions p S1447 (NTCLP)

88 Submissions p S1172 (AEC)

89 Transcript p 284 (Tangentyere Council)

90 Transcript pp 134-135 (The Hon. W.Snowdon MP, Member for the Northern Territory), 146-147 (NTCLP) and 188 (Senator the Hon. G.Tambling)

...We have to see how that might impact on the administration and the way in which we proceed with close of nominations, candidates getting photographs and getting them on ballot papers. It is a pretty major logistical exercise that we do engage in and one that does stretch the envelope in terms of timing.<sup>91</sup>

- 3.74 Ballot papers containing photographs are used in the Northern Territory Legislative Assembly elections. The procedure for the use of photographs in the Northern Territory may provide a model for their use in federal elections. The photographs are provided by the candidate with the nomination form. The photographs must be black and white head and shoulders portraits of a designated size. The photographs must be no more than six months old.<sup>92</sup>
- 3.75 In a submission the AEC provides examples of a Northern Territory ballot paper and a mock up of a potential House of Representatives ballot paper containing candidate photographs.<sup>93</sup> Both of these examples indicate that the concept of candidate photographs on House of Representatives ballot papers is workable.
- 3.76 Investigations revealed that about 30 countries have photographs on ballot papers but it is unclear whether this is for all candidates or just for presidential candidates. Countries in the list include Greece, New Guinea, Portugal, South Africa and Peru.
- 3.77 The Committee believes that such a proposal may be considered in the future.
- 3.78 The AEC does not collect any information on voter participation rates or assisted voting in any particular racial group or cultural community. However, as part of the public awareness campaign in the lead up to the 1998 federal election, the AEC translated its press advertising into 19 languages, its radio advertising into 23 languages and its television advertising into 7 languages. A 15 language telephone interpreting service was also provided. In addition, radio advertisements were translated into 15 indigenous languages. Similar arrangements were made during the public awareness campaign for the 1999 referendum. In the Division of Fowler, which has a high population of Non English Speaking Background voters and high informality rates at past electoral events, the AEC trialed a video campaign in selected polling places during

---

91 Transcript p 441 (AEC)

92 Regulation 32, *Northern Territory Electoral Regulations 1996*

93 Submissions pp S2388-S2391 (AEC)

the 1998 federal election, running videos in several languages on how to cast a formal vote.<sup>94</sup>

- 3.79 Although recommended by the Hon. Warren Snowdon MP, Member for the Northern Territory, the Tangentyere Council, Mr Kerry Heisner (former Australian Electoral Officer for the Northern Territory), and the AEC,<sup>95</sup> the Committee does not believe that the Aboriginal and Torres Strait Islander Electoral Information Service (ATSIEIS), a national program abolished in 1996 which aimed at encouraging the participation of Aboriginal and Torres Strait Islander people in the electoral process,<sup>96</sup> should be reinstated. Because no statistics on the assisted voting or voter turnout of particular racial groups or cultural communities are collected, the AEC says it is not possible to measure in numerical terms the impact of the abolition of ATSIEIS.<sup>97</sup> Information on the success of ATSIEIS is therefore based on informal accounts, such as those provided by Mr Heisner.<sup>98</sup> The Committee feels there is room for a more focussed and short term program to reduce the level of assistance required.

### **Recommendation 37**

- 3.80 **That the AEC report to the Committee on options for an effective integrated educational and enrolment service for Aboriginal and Torres Strait Islanders before the next federal election.**

### **Provisional voting**

- 3.81 The purpose of provisional voting is to ensure that those electors whose names may have been removed from the Commonwealth Electoral Roll in error during the objection process<sup>99</sup> by the AEC are not disenfranchised when they present to vote at the polling booth to find their names not on the certified list. The declaration votes provided by provisional voters are checked against the Roll before being entered into the count. In certain circumstances, for example when the voter claims to have moved to

---

94 Submissions pp S2506-S2507 (AEC)

95 Transcript pp 133 (Hon. W.Snowdon MP, Member for the Northern Territory), 283 (Tangentyere Council), 207 (K.Heisner) and Submissions p S1712 (AEC)

96 Joint Standing Committee on Electoral Matters. 1997. *The Federal Election: Report of the Inquiry into the conduct of the 1996 Federal Election and matters related thereto*. Canberra, AGPS, p 44.

97 Submissions p S2506 (AEC)

98 Transcript pp 205-207 (AEC)

99 Objections are the method by which voters are removed from the Commonwealth Electoral Roll. They are contained in Part IX of the Electoral Act.

another address within the Division, the enrolments of such voters are reinstated.<sup>100</sup>

3.82 There were 182,573 provisional votes issued and received, and 116,158 provisional votes counted by the AEC.<sup>101</sup> In comparison, 174,422 provisional votes were issued and 105,091 counted in the 1996 federal election.<sup>102</sup> Of the total provisional votes issued and received in 1998 by the AEC, 66,415, or 36.38% were not counted because they failed to pass the preliminary scrutiny (see Chapter 4 for discussion on the preliminary scrutiny process).<sup>103</sup> In the 1996 federal election 69,331, or 39.75%, of provisional votes were not counted. The AEC stated that in relation to the 1998 federal election:

...The statistics demonstrate that there does not appear to be any unusual activity occurring in relation to provisional voting.<sup>104</sup>

The AEC argues that the most important factor in the rate of rejection of provisional votes is the interaction between the removal of electors from the Roll through objection action in the months prior to the election and changes in voter participation from one election to another.<sup>105</sup>

3.83 A number of submissions and other evidence raising concerns about provisional voting have been received during the inquiry, including from:

- the Liberal Party, which argues that voters who fail to re-enrol after moving should not have access to a provisional vote;
- Ms Fran Bailey MP, Member for McEwen who calls for a comparison of the numbers of provisional votes cast in marginal seats at the 1996 and 1998 federal election;
- Mr Jim Lloyd MP, Member for Robertson, pointing out that, considering a recent habitation check in his Division, an unacceptably high number of provisional votes had been cast and were accepted during the 1998 federal election;
- Dr Amy McGrath, who argues that provisional voters amount to a new class of voters who can enrol without identity checks; and
- Mr Gary Nairn MP, Member for Eden-Monaro, who highlights the 85% increase in provisional votes cast and the 163% increase in provisional

---

100 Submissions p S404 (AEC)

101 Submissions p S404 (AEC)

102 Submissions pp S510 and S513 (AEC)

103 Submissions p S404 (AEC)

104 Submissions p S404 (AEC)

105 Submissions p S2508 (AEC)

votes counted in the Division of Eden-Monaro at the 1998 federal election.<sup>106</sup>

- 3.84 The largest increase in provisional votes during the 1998 federal election was in New South Wales, with an increase from 53,687 provisional votes in the 1996 federal election to 73,416 in 1998. In some Divisions, such as Eden-Monaro and Dobell, the number of provisional votes almost doubled.<sup>107</sup>
- 3.85 The AEC explains the large number of provisional votes in New South Wales by indicating that before the last federal election there was a major roll review in New South Wales with a significant amount of objection action. Consequently, a number of people were taken off the Roll. The AEC claims that because a large number of those removed from the Electoral Roll by objection action have only moved within their Division, they are entitled to a provisional vote, increasing the number of provisional votes.<sup>108</sup>
- 3.86 Provisional voting numbers in the Northern Territory also increased significantly. During the 1996 federal election, electors in the Northern Territory were subject to different provisional voting rules to those that applied in the rest of Australia. Provisional voters who moved between subdivisions in the Northern Territory could not be reinstated on the Electoral Roll. The Northern Territory rules for reinstatement of provisional voters were brought into line with those of the rest of Australia in the *Electoral and Referendum Amendment Act 1998*. Voters who move between subdivisions in the Division of the Northern Territory are now reinstated if they lodge a provisional vote.<sup>109</sup>
- 3.87 The effect of the amendment on saving provisional votes in the Northern Territory was significant. In the 1996 federal election there were 3,516 rejected declaration votes, including 2,529 provisional votes. In the 1998 federal election there were 1,895 rejected declaration votes, of which 980 were provisional votes.<sup>110</sup> This change to practice in the Northern Territory caused some difficulty with the NTCLP, which was concerned

---

106 Submissions pp S58 (F.Bailey MP, Member for McEwen), S684 (J.Lloyd MP, Member for Robertson), S755 (A.McGrath), S781 (Liberal Party) and Transcript p 42 (G.Nairn MP, Member for Eden-Monaro)

107 Submissions p S508 (AEC)

108 Transcript p 42 (AEC)

109 Submissions p S385 (AEC)

110 Submissions p S1162 (AEC)

about the time taken to verify the authenticity of some declaration certificates and the much larger number of accepted provisional votes.<sup>111</sup>

- 3.88 The AEC points out that although European names are easy to track on the RMANS system for provisional vote purposes, some names, addresses and dates of birth, most commonly those of Aboriginal electors, may not be so easy to locate. Many Aborigines live in communities that do not have street addresses, many have more than one name, and many do not know their exact date of birth or even the year. Because of this it takes a little more time to carry out the standard checks to determine the admissibility of the provisional vote.<sup>112</sup>
- 3.89 The AEC provided the Committee with a demonstration of the preliminary scrutiny of provisional votes in Darwin on 21 May 1999. A description of the preliminary scrutiny of all declaration votes is contained in Chapter 4.
- 3.90 The process for providing a provisional vote is contained at Schedule 3 of the Electoral Act. The process has been amended over time and has grown cumbersome and complex. The AEC expresses a concern about this.<sup>113</sup>
- 3.91 If an elector is removed under objection action from the Roll, and they then make a provisional vote claiming that they still reside within the Division, the DRO is required to reinstate the elector at their enrolled address and admit the vote. A notice of determination of the admissibility of a vote is then sent to the elector. Clearly, many of the reinstated electors are not living at the addresses they are enrolled for and in many cases the determination is returned either unclaimed or with an indication that the person no longer resides at that address. The DRO then instigates objection action, and the process begins again.<sup>114</sup>
- 3.92 The simplest solution to this problem is to break the nexus between reinstatement on the Roll and provisional voting. This proposal does not affect the franchise, but does improve the accuracy of the Roll. The AEC recommends the nexus between provisional voting and reinstatement on the Roll be broken by repealing s105(4) and s105(5) of the Electoral Act.<sup>115</sup> Although this proposal will not necessarily reduce the number of provisional votes cast, the suggestion is a significant improvement over

---

111 Submissions pp S552-S553 (NTCLP) and Transcript p 191 (Senator the Hon. G Tambling)

112 Submissions p S1161 (AEC)

113 Submissions p S414 (AEC)

114 Submissions p S414 (AEC)

115 Submissions p S415 (AEC)

the current practice. The majority of the Committee supports this recommendation.

### Recommendation 38

- 3.93 **That the nexus between provisional voting and reinstatement be broken by deleting ss 105(4) and 105(5) of the *Commonwealth Electoral Act 1918*.**
- 3.94 If the nexus is broken the AEC recommends two possible options to further update the process. The first option is for the AEC to take action to re-enrol an elector at their new address if the elector is at an address within the Division other than the one they were previously enrolled at.<sup>116</sup> This is the option favoured by the AEC.
- 3.95 The second option is to repeal paragraphs 10(b), 11(b), 11A, 12, 13, and 14 of Schedule 3 of the Electoral Act. This would result in a similar situation to that which occurs in state elections, which is that if your name is not on the Roll, you cannot vote. While this may have the effect of removing the rights of those electors whose names had been removed from the Roll by official error such consequences would be minimal.<sup>117</sup> This option is favoured by the Liberal Party, Mr Graham Smith (DRO for Forde) and Mr Arthur Tuck<sup>118</sup> on the basis that the current process rewards voters for breaking the law by granting them a vote.

### Recommendation 39

- 3.96 **That the *Commonwealth Electoral Act 1918* be amended so that:**
- **if an elector has moved within the Division they are enrolled for since the last redistribution or federal election and has not re-enrolled, then the AEC will take action to re-enrol the elector at their current residential address and their provisional vote for the Division and the Senate will be counted;**
  - **if an elector has moved outside the Division they are enrolled for but within the same State or Territory since the last redistribution or federal election and has not re-enrolled, then**

116 Submissions p S719 (AEC)

117 Submissions p S719 (AEC)

118 Submissions pp S781 and Transcript p 169 (Liberal Party); Submissions p S1292 (G.Smith) and Transcript p 335 (A.Tuck)



**the AEC will take action to re-enrol the elector at their current residential address and their provisional vote for the Senate will be counted; and**

- **if an elector has moved outside the State or Territory they are enrolled for since the last redistribution or federal election and has not re-enrolled, then the AEC will take action to re-enrol the elector at their current residential address and their provisional vote will not be counted.**

## Voting by prisoners

- 3.97 The Electoral Act provides that any person serving a prison sentence of five years or longer is not entitled to enrol or vote at Federal elections. The *Electoral and Referendum Amendment Act [No 1] 1999* originally contained a proposal to abolish the franchise for all prisoners, but this was defeated in the Senate.
- 3.98 Active advocates of prisoners rights include Justice Action and the Australian Democrats. They argue that it is important to understand that whilst prisoners are deprived of their liberty in detention, they are not deprived of their citizenry of the nation. As part of their citizenship, all convicted prisoners in detention should be entitled to vote.<sup>119</sup> The Democrats argue that to deny prisoners the vote is to impose an additional penalty on top of that judged appropriate by the court.<sup>120</sup>
- 3.99 Justice Action also points out that a very low percentage of prisoners, between 2% and 33% at the 1996 federal election depending on the institution, actually vote. Given the low participation rate, Justice Action recommends the AEC pursue a campaign aimed at increasing prisoner participation, including enrolling prisoners at the time of imprisonment and targeting a publicity campaign to prisons.<sup>121</sup>
- 3.100 The AEC indicates that posters encouraging prisoners to vote were distributed to prisons prior to the 1998 federal election, and expect an improvement in this service in future. The AEC also rejects the proposition that prisoners be enrolled at the time of imprisonment on the basis that prisoners should remain enrolled at their home addresses.<sup>122</sup>

---

119 Submissions pp S1313 (Justice Action) and S1618 (Australian Democrats)

120 Submissions p S1618 (Australian Democrats)

121 Submissions p S1312 (Justice Action)

122 Submissions pp S1656-S1657 (AEC)

3.101 The Committee notes that this issue has been raised a number of times in the past as part of previous inquiries and any move to change the legislation has met with fierce opposition. Following the 1993 election the recommendation<sup>123</sup> to extend the franchise to all prisoners was initially included in amending legislation, but was withdrawn, and, as mentioned above, the proposal to abolish the franchise for all prisoners has recently been defeated. Although the majority of this Committee concurs with the previous Committee's recommendation, it believes that the current legislation should stand until there is sufficient and widespread public support for a change.

## **Fraudulent enrolment and voting**

3.102 The AEC states that before the 1998 federal election there were some minor cases of enrolment fraud, especially in North Queensland, which were detected by the AEC, investigated by the Australian Federal Police (AFP) and prosecuted.<sup>124</sup>

3.103 The Committee has received a number of submissions dealing with the potential for electoral fraud to occur. These can be divided into five categories:

- the accuracy of the Commonwealth Electoral Roll;<sup>125</sup>
- the security of ballot papers;
- fraud in particular divisions;
- dual and multiple voting; and
- voting in the name of a deceased person.

## **Accuracy of the Commonwealth Electoral Roll**

3.104 Matters relating to the accuracy of the Commonwealth Electoral Roll are discussed in Chapter 2.

---

123 Joint Standing Committee on Electoral Matters. 1994. *The Federal Election: Report of the Inquiry into the conduct of the 1993 Federal Election and matters related thereto*. Canberra, AGPS, pp 143-144.

124 Submissions p S416 (AEC)

125 Submissions pp S557 (A.Beckett) and S1334 (A.Viney)

## Security of ballot papers

- 3.105 Three submissions to the inquiry contain concerns about the transport of ballot papers. Mr Peter Cork's submissions presents hearsay evidence,<sup>126</sup> but the other two, from Mr Nicholas and Pauline Hanson's One Nation Party Gilgandra Branch concern delays in the transport of ballot papers from polling booths to the Divisional Office.<sup>127</sup>
- 3.106 The AEC points out that there could be any number of justifiable reasons why the delivery of ballot material to the Divisional office took longer than might be expected, such as an arrangement not to have the ballot materials delivered to the Divisional office until after counting of ballots at the main polling booth had been completed, or the requirement of the courier to pick up a number of ballot boxes from smaller booths.<sup>128</sup> Generally, electoral material is properly sealed before leaving the polling booth and a courier is used for transporting the ballot box to the Divisional office, with a driver and an offsider employed so that at least one person could remain with the lockable van at all times.<sup>129</sup>
- 3.107 A number of submissions raised a concern about the use of pencils to mark the ballot paper.<sup>130</sup> In relation to these concerns, the AEC responds that pencils are used on the basis that they are more reliable than pens.<sup>131</sup> The issue of the use of pencils was dealt with as part of the 1993 federal election report. In that report the Committee found that there would be no real improvement in security as a result of the use of pens to mark the ballot paper.<sup>132</sup>
- 3.108 Mr K Lawson objects to the presence of party scrutineers during the count on the basis that their presence might threaten the security of the ballot.<sup>133</sup> With regard to scrutineers, the Committee is of the opinion that party scrutineers are an excellent guarantee of transparency and accountability in overseeing the election process.

---

126 Submissions p S1091 (P.Cork)

127 Submissions pp S182 (J.Nicholas) and S561 (Pauline Hanson's One Nation Party Gilgandra Branch)

128 Submissions p S1165 (AEC)

129 Submissions p S1143 (AEC)

130 Submissions pp S558 (A.Beckett), S595 (J.Thamm), S695 (Pauline Hanson's One Nation Oakley Branch), S1091 (P.Cork), S1324 (R.Hore) and S1344 (K.Lawson)

131 Submissions p S1645 (AEC)

132 Joint Standing Committee on Electoral Matters. 1994. *The Federal Election: Report of the Inquiry into the conduct of the 1993 Federal Election and matters related thereto*. Canberra, AGPS, p45.

133 Submissions p S1347 (K.Lawson)

3.109 Dr Amy McGrath is particularly concerned about the potential for corrupt and illegal practice in the Australian electoral process. She is especially alarmed by the decision to outsource the Commonwealth Electoral Roll to a private firm and does not believe this is an adequate protection against security threats such as computer hackers.<sup>134</sup> The Committee is aware that other parliamentary committees are conducting inquiries into the adequacy of outsourcing arrangements. Outsourcing of the Commonwealth Electoral Roll will be a matter for regular review by the Committee. The AEC should advise the Committee of any future changes to the outsourcing arrangements.

### Fraud in particular Divisions

3.110 Allegations of electoral fraud at any given election tend to focus on those Divisions about which there is some controversy. During the 1998 federal election, the Division most cited as an example of electoral fraud is the Division of Dickson. Allegations received by the Committee in relation to the Division of Dickson are:

- Mr E. H. Vaughan, who claims that there were 6,816 illegal votes cast in the Division;<sup>135</sup>
- Mr David Mudgee, who claims that invalid votes were counted in the Division;<sup>136</sup> and
- Mr Graeme Lee, who alleges that over 100 extra votes were found at the Albany Creek South polling booth in the Division.<sup>137</sup>

3.111 Mr Vaughan and Mr Mudgee are probably alluding to the fact that a number of ballot papers were re-admitted to the count after being incorrectly classified as informal. The AEC advised that:

...in the Division of Dickson, many ballot papers with the last square blank were incorrectly assessed at the polling booth on election night as informal, and did not enter the count. At the fresh scrutiny following election night, these ballot papers were correctly reclassified as formal under section 268(1)(c) of the Electoral Act and entered into the count, thus changing the progressive results.<sup>138</sup>

---

134 Submissions p S742 (Dr A.McGrath)

135 Submissions p S260 (E.Vaughan)

136 Submissions p S162 (D.Mudgee)

137 Submissions p S275 (G.Lee)

138 Submissions p S408 (AEC)

- 3.112 In the interests of clearing up the question of the illegal votes, the AEC conducted an investigation of multiple voting in the Division and was able to determine that in fact only two votes may have been the result of multiple voting.<sup>139</sup>
- 3.113 In relation to the Albany Creek South polling booth, the results of the count on election night revealed a difference of 7 ballots in the reconciliation. Because of the discrepancy in the reconciliation the fresh scrutiny after election night at the polling booth was observed by 20 scrutineers and a number of media. Those who observed the fresh scrutiny were satisfied with the results.<sup>140</sup>
- 3.114 Overall the AEC reported that:
- The counting of ballot papers in the Division of Dickson was subject to intense scrutiny, and AEC staff were congratulated by the scrutineers at the conclusion of the count, despite the closeness of the result...<sup>141</sup>
- 3.115 The other Division about which a concern has been expressed is the Division of Blair. Mr Charles Turner claims that when the count had eliminated all but three candidates, the candidate with the second highest number of votes was illegally eliminated from the count.<sup>142</sup> The AEC point out that the process described by Mr Turner only actually applies after the initial count of first preferences, and that it is therefore likely that Mr Turner has misunderstood the provisions of the Electoral Act relating to the scrutiny of House of Representatives votes.<sup>143</sup>

## Dual and multiple voting

- 3.116 A number of submissions to the inquiry dealt with multiple voting, advocating both greater security and arguing that multiple voting is becoming endemic.<sup>144</sup> The views of Mr Arthur Tuck best summarise the concerns of this group:

---

139 Submissions p S1148 (AEC)

140 Submissions p S1149 (AEC)

141 Submissions p S1148 (AEC)

142 Submissions p S1338 (C.Turner)

143 Submissions p S1661 (AEC)

144 Submissions pp S60 (A.Emms), S162 (D.Mudgee), S206 (D.Carrington-Smith), S207 (N.Kendall), S264 (C.Hewson), S275 (G.Lee), S314, S1854 (A.Tuck), S508 (S.Jackson), S558 (J.Beckett), S596 (B.Hudsen), S606 (C.Bevan), S638 (L.Bauer), S667 (M.Goldstiver), S689 (V.Stewart), S690, S1824 (Office of the Leader of Pauline Hanson's One Nation Party), S1091 (P.Cork), S1100 (E.Farear), S1103 (Patriotic Movement of Australia), S1344 (K.Lawson) and S2359 (B.Ward)

I wish to object most strongly at the complete lack of any security in the voting procedure. There is absolutely nothing to stop me or anyone else voting in my own name or somebody else's name in every polling booth I can get to...<sup>145</sup>

3.117 Detecting dual and multiple voting is relatively easy. Each polling booth within a Division is provided with an identical copy of the Roll for that Division. As a voter is given a ballot paper, their name is crossed off the Roll. If the voter then votes again at another polling booth, their name is struck off the Roll at that booth as well. In effect, there is a record of their dual or multiple vote.<sup>146</sup>

3.118 After election day, the rolls are scanned and the names of those who have apparently voted multiple times are recorded. These multiple votes are then investigated:

..a substantial number of [apparent dual and multiple votes] are the result of scanning errors or official errors, and are resolved after investigation by matching with apparent non-voters...<sup>147</sup>

3.119 The AEC reports that, once official errors were removed, the number of dual votes increased from 239 at the 1996 federal election to 966 at the 1998 federal election. The AEC explained that:

Following the 1996 federal election, not all State Head Office reports included all cases of dual voting detected, only those that had some prospect of being accepted by the AFP for investigation. By contrast, for the 1998 federal election, this oversight has been corrected, and State Head Offices have reported all cases of suspect dual voting...<sup>148</sup>

3.120 The AEC divides those electors who are suspected of having voted more than once into those who have voted twice (dual voting) and those who have voted more than twice (multiple voting). The AEC uses this distinction because most dual votes are more likely to be the result of confusion as a result of age or language and cultural difficulties rather than an effort to defraud the electoral system.<sup>149</sup> Statistics provided by the AEC indicate that this is the case, with 56% of dual voters coming from a

---

145 Submissions p S314 (A.Tuck)

146 Australian Electoral Commission. 1998. *Electoral Background, No 5*. 17 July, Canberra, AEC, p 1.

147 Submissions p S416 (AEC)

148 Submissions pp S2273-S2274 (AEC)

149 Submissions p S2272 (AEC)

non English speaking background, and 13% of dual voters being aged over 70.<sup>150</sup> According to the AEC:

...In such cases, it is not in the public interest to prosecute.<sup>151</sup>

3.121 With regard to multiple voting, the AEC reports that it was able to detect 45 cases of suspected multiple voting. All of these cases have been referred to the AFP for investigation. Of those cases referred, the AFP rejected 33 on the basis that they did not have the resources to pursue these cases. In fact, following the 1998 federal election, the AFP routinely rejected cases of multiple voting that allegedly involved up to 12 votes cast by one individual.<sup>152</sup>

3.122 The AEC claims the reason for this lack of action is:

...that the level of the penalty for the multiple voting offence under the Electoral Act is set at such a relatively low level (6 months imprisonment or a pecuniary penalty averaging \$500 prior to 1998 and a pecuniary penalty of \$1,100 after 1998) that the AFP is unable to give the offence high enough priority for investigation, in a climate of limited resources.<sup>153</sup>

3.123 In the Committee's view, a six month imprisonment is not a low penalty. However, the Committee considers the pecuniary penalty is low relative to the term of imprisonment.

3.124 As part of the 1996 federal election inquiry report, the Committee recommended the AEC conduct a review of penalties under the Electoral Act with the assistance of the Attorney General's Department.<sup>154</sup> According to the AEC, this review has not taken place because of the steady inclusion of the penalty units system in the Electoral Act, and the changes to the Electoral Act that will result from some of those sections of the Electoral Act dealing with punishments for offences being transferred to the *Criminal Code Act 1995*. In addition, the AEC advises that the Attorney General's Department has informally indicated that a review of the levels of penalties in the Electoral Act should take place within policy guidelines concerning desirable and specified penalty levels. The AEC

---

150 Submissions p S2273 (AEC)

151 Submissions p S416 (AEC)

152 Submissions pp S2353-S2355 (AEC)

153 Submissions p S2282 (AEC)

154 Joint Standing Committee on Electoral Matters. 1997. *The Federal Election: Report of the Inquiry into the conduct of the 1996 Federal Election and matters related thereto*, Canberra, AGPS, p 90.

indicates a preference that these policy guidelines be set by the Committee.<sup>155</sup>

3.125 All of the 12 remaining multiple voting cases investigated by the AFP resulted in a denial by the suspected multiple voter and no further action by the AFP.<sup>156</sup> The AEC explains the failure to pursue the remaining 12 cases on the basis that, despite the amendment to the Electoral Act as part of the *Electoral and Referendum Amendment Act 1998* to remove the need to prove wilful intent in relation to multiple voting, in effect there is still a requirement to prove intent. In other words, the amendment:

...does not provide any relief from the necessity for the offence to be properly investigated by the AFP, so the relevant admissible evidence, including any explanation obtained from the alleged offender for the conduct under investigation, is provided to the DPP in order to decide if an offence is disclosed and if prosecution is in the public interest.<sup>157</sup>

3.126 The result of the AEC's investigations into dual and multiple voting during the 1998 federal election has resulted in the commencement of three prosecutions for dual voting to date.<sup>158</sup>

3.127 As a solution to the AFP's inability to pursue cases of multiple voting on grounds of priority, the AEC recommends that the Committee consider increasing the pecuniary penalties for multiple voting in order to make this offence a higher priority for the AFP to investigate.<sup>159</sup> Mr Alan Viney also advocates this point.<sup>160</sup>

3.128 The Committee strongly believes that deliberate multiple voting is a serious offence that can have a significant impact on the effective operation of the democratic process. Authorities need to take this matter seriously.

---

155 Submissions p S2282 (AEC)

156 Submissions p S2276 (AEC)

157 Submissions p S2280 (AEC)

158 Submissions p S2277 (AEC)

159 Submissions p S2283 (AEC)

160 Submissions p S1335 (A.Viney)



## Voting in the name of a deceased person

- 3.129 Mr Jim Lloyd MP, Member for Robertson, indicates to the Committee that he believes he had detected an attempt to fraudulently vote at the 1998 federal election on the basis that five apparently deceased voters had voted.<sup>161</sup>
- 3.130 During parliamentary debate over the *Electoral and Referendum Amendment Act (No 1) 1999* in the House of Representatives in December 1998, Mr Lloyd alleged that, following an investigation of a list of 51 people Mr Lloyd claimed had died between the issue of writs and election day for the 1998 federal election, five had been found to have voted by the AEC.<sup>162</sup>
- 3.131 On November 5, a staff member in Mr Lloyd's office sent the acting DRO for Robertson a list of 51 names of allegedly deceased people who had voted at the election. The AEC confirmed with Mr Lloyd's office that 46 of these allegedly deceased people had not voted, while 5 had. Following Mr Lloyd's comments in Parliament, the AEC was able to confirm that, as a result of recent Roll review activities, the five electors were in fact alive.<sup>163</sup>
- 3.132 The AEC did not inform Mr Lloyd of this until well into April 1999,<sup>164</sup> by which time Mr Lloyd had written a submission to the Committee.
- 3.133 Mr Lloyd indicates that while the AEC claims that only five of the original 51 electors were in fact alive at the 1998 federal election, up to seven of these electors were still on the Electoral Roll by 19 November 1999.<sup>165</sup>
- 3.134 The AEC expresses some concern that the issue of the five allegedly deceased might take on the status of fact.<sup>166</sup> The Committee feels this prospect would have been less likely had the AEC removed all the appropriate names from the Roll at the time they were determined to be deceased, and communicated the fact that the five electors were alive to Mr Lloyd at the time this had been determined, rather than some months later. The Committee is of the opinion that this constitutes a clear breakdown in procedures.

---

161 Submissions p S685 (J.Lloyd MP, Member for Robertson)

162 House of Representatives Hansard, 2 December 1998, p 934

163 Submissions p S419 (AEC)

164 Transcript p 49 (AEC)

165 Submissions pp S2401-S2402 (J.Lloyd MP, Member for Robertson)

166 Submissions p S417 (AEC)

**Recommendation 40**

- 3.135 That the AEC review its procedures for updating the Commonwealth Electoral Roll following notification of the death of an elector.**

**Conclusion**

- 3.136 During the 1998 federal election:

...the AEC detected no widespread and organised electoral fraud that could have affected the result in any Division, particularly any marginal Division...<sup>167</sup>

- 3.137 Overall, the AEC is concerned about the threat to the integrity of the electoral system posed by false claims of electoral fraud that remain unchallenged and unquestioned:

Since 1984, a parliamentary inquiry has been held into the conduct of every federal election. At each of these inquiries the possibility of fraudulent enrolment and voting has been investigated, and each time it has been concluded that no evidence was available to support allegations that widespread and organised electoral fraud had occurred to such an extent that the result of any of those elections was in doubt.<sup>168</sup>

- 3.138 While the Committee understands the AEC's concerns about the integrity of the electoral system being threatened by false claims of fraud, the Committee points out that criticism of the electoral system should be welcomed as one method of ensuring the ongoing integrity of the system.
- 3.139 The Committee has seen no evidence of widespread and organised electoral fraud having occurred at the 1998 federal election. All examples of electoral fraud provided to the Committee as part of this inquiry appear to be either based on hearsay or have a reasonable explanation.

---

167 Submissions p S416 (AEC)

168 Submissions p S416 (AEC)

## **After the close of poll**

### **Conduct of the count**

- 4.1 The delivery of federal election results is of necessity a complex and time-consuming process. There are a number of important checks and balances built into the electoral system that require specified time periods and procedures in order to deliver an accurate and legally sustainable outcome. Notwithstanding this, a number of legislative changes have improved the time frames in which a result can be obtained.<sup>1</sup>

### **Distribution of first preferences**

- 4.2 On the night of the election, and immediately after the close of the polls, the Australian Electoral Commission (AEC) officials perform a formality check on the preference markings of all House of Representatives ballot papers. Those ballot papers that pass the formality test are sorted into first preferences, and the results conveyed to the Divisional office. In very safe House of Representatives Divisions, this count may deliver an unequivocal result.<sup>2</sup>

### **Two candidate preferred count**

- 4.3 In most Divisions the first preference count does not provide an immediate result. Rather than wait for a full distribution of preferences to determine the outcome of the Division, a provisional scrutiny, known as the two candidate preferred count, is implemented.

---

1 Submissions p S405 (AEC)

2 Submissions pp S405-S406 (AEC)

- 4.4 The two candidate preferred count involves the AEC providing all Divisions before polling day with the names of two candidates for each Division who, on the basis of historical voting trends, are most likely to be in contention in each Division. The Divisional Returning Officer (DRO) provides this information to the Officer in Charge of each polling place in a sealed envelope that is opened after the close of polls. After the distribution of first preferences, second or later preferences are distributed to only these two candidates to give an early indication of the winning candidate.<sup>3</sup>
- 4.5 In some Divisions it may be very difficult to select the correct two candidates for the two candidate preferred count without first proceeding to a partial or full distribution of preferences:
- ... This situation occurs most often in three cornered contests,... or where the order of exclusion of candidates unlikely to win cannot be determined with any certainty. In these circumstances, marginal Divisions are described as 'close seats'... and special arrangements are put in place by the AEC to manage the count and to provide progressive results.<sup>4</sup>
- 4.6 The two candidate preferred count was undertaken successfully in the 1998 federal election, providing the public and the candidates with an early indication of the likely winner in most Divisions. However, in a handful of Divisions it became clear that the selection of the two preferred candidates by the AEC was incorrect. To avoid misleading observers on possible outcomes, the AEC invoked a program known as 'Maverick' in the computerised Election Night System which repressed all results for those Divisions. This occurred in three Divisions on election night: Bendigo, Lowe and Moore. After election night, the AEC also invoked Maverick in another six Divisions: Hunter, Calare, Wide Bay, Mayo, Curtin and Kalgoorlie.<sup>5</sup>
- 4.7 Concern was expressed about delays in reaching a result due to a miscalculation by the AEC of the two candidates in the two candidate preferred count. Both the Australian Democrats and the Liberal Party were particularly concerned with regard to the Division of Mayo.<sup>6</sup> The Australian Democrats South Australian Division argues that DROs should have the flexibility to determine which candidates enter the two candidate preferred count.<sup>7</sup> The AEC indicates that DROs in fact do have the
- 

3 Submissions p S406 (AEC)

4 Submissions p S408 (AEC)

5 Submissions p S407 (AEC)

6 Submissions pp S228 (Australian Democrats South Australia Division) and S774 (Liberal Party)

7 Submissions p S228 (Australian Democrats South Australia Division)

flexibility to change the candidates in the two candidate preferred count,<sup>8</sup> and with regard to the Division of Mayo:

...the AEC ... took the best guesstimate on the appropriate candidates for the provisional TCP [two candidate preferred] count using all relevant data. There will always be the possibility that such TCP guesstimates are wrong.<sup>9</sup>

- 4.8 Three submissions received from individuals who were either scrutineers or who spoke to scrutineers indicate some level of misunderstanding about the two candidate preferred count. Mr Don McNaughton, Mr Mark Roberts and the Patriotic Movement of Australia<sup>10</sup> appear to mistake what is an attempt to provide an early indicative result for a Division with an effort by the AEC to reach a predetermined result for the Division by deciding which candidates are eliminated. In fact, as discussed below, the formal count with a distribution of preferences, called the fresh scrutiny, begins the day after the election.
- 4.9 On a matter related to election night, the Liberal Party reports that the AEC provides parties with cumulative results for Divisions based on the percentage of the vote counted. In order to arrive at this cumulative figure, the AEC has to add up the totals from each booth. The Liberal Party believes these individual booth results should be made available to the representatives of registered political parties as soon as the AEC receives the results to assist in the interpretation of election night results.<sup>11</sup>
- 4.10 In response, the AEC appreciates the interest both the Liberal Party and other political parties have in individual booth statistics but reports that its primary responsibility and priority is to produce a definitive election result.<sup>12</sup> The Committee concurs with the AEC on this point. Delivering a definitive result is the primary goal on election night.

---

8 Submissions p S1147 (AEC)

9 Submissions p S1186 (AEC)

10 Submissions pp S237 (D.McNaughton), S692 (M.Roberts) and S1106 (Patriotic Movement of Australia)

11 Submissions p S779 (Liberal Party)

12 Submissions p S1189 (AEC)

## Fresh scrutiny

4.11 The fresh scrutiny of ordinary votes begins on the Monday after election day, except in 'close seats' where there is pressure for a definitive result. In such cases, the AEC provides additional staff and extra resources to enable the fresh scrutiny to commence immediately.<sup>13</sup> The fresh scrutiny involves rechecking the formality of the ballot papers and counting to a full distribution of preferences. The result of this scrutiny becomes the proper legal result of the election.<sup>14</sup> The fresh check of formality was a significant factor in the Division of Dickson:

... Many ballot papers with the last square blank were incorrectly assessed at the polling booth on election night as informal, and did not enter the count. At the fresh scrutiny following election night, these ballot papers were correctly reclassified as formal under section 268(1)(c) of the Electoral Act and entered into the count, thus changing the progressive results.<sup>15</sup>

## Preliminary scrutiny of declaration votes

4.12 The preliminary scrutiny of all declaration votes begins the day after the election. Preliminary scrutiny involves ensuring the eligibility of each declaration voter by a comparison of the personal voter details on the declaration envelope with the Commonwealth Electoral Roll, before the ballot papers are entered into the count.<sup>16</sup>

4.13 As the *Commonwealth Electoral Act 1918* (Electoral Act) allows 13 days after polling day for the receipt of postal votes, the preliminary scrutiny process will continue until the last admissible declaration vote is received. This means that in a close contest, the result may hinge on the rate of receipt of outstanding postal votes, and may take up to a fortnight.<sup>17</sup> According to the AEC a major impact on the speed of the count in many Divisions at the 1998 federal election was the unusually high number of postal votes. This meant that in many close seats the count could not be concluded until the 13 day period for the receipt of postal votes had passed.<sup>18</sup>

4.14 The 13 day period for the receipt of postal votes ended on Friday 16 October 1998. The Electoral Commissioner has the discretion to extend

---

13 Submissions p S406 (AEC)

14 Submissions p S406 (AEC)

15 Submissions p S408 (AEC)

16 Submissions p S406 (AEC)

17 Submissions p S407 (AEC)

18 Submissions p S408 (AEC)

this period if he feels that a significant number of postal votes have been delayed, but did not do so on this occasion. A number of outstanding votes were received from Lagos, but these would not have influenced the results in the particular Divisions they were intended for.<sup>19</sup>

## Declaration of poll

- 4.15 Once all postal votes have undergone the scrutiny stage and been counted, the count is concluded. A full distribution of preferences is undertaken as a final check, and the poll is declared. In those Divisions in which the result is clear from the two candidate preferred count on election night and the declaration votes will have no effect on the result then the declaration can take place earlier.<sup>20</sup> The full distribution of preferences in these Divisions will still occur after the receipt of all postal votes.
- 4.16 The AEC recommends a technical amendment to the Electoral Act so that the declaration of the poll for House of Representatives Divisions can take place somewhere other than the Divisional office where nominations were received. This is primarily aimed at allowing enough space for interested parties to attend the declaration, which may not be available in the Divisional office, and reflects current practice for the declaration of the Senate poll.<sup>21</sup> The Committee accepts this recommendation, although recommends such a decision be made in consultation with all candidates. Senate candidates are notified in writing of the date, time and place of the declaration of the poll.<sup>22</sup> If this recommendation is accepted, the same method of notification should be adopted for the declarations of House of Representatives Divisions.

### Recommendation 41

- 4.17 **That the *Commonwealth Electoral Act 1918* be amended to allow Divisional Returning Officers some discretion as to the location for the declaration of the poll. All candidates should be consulted prior to the selection of the location.**

---

19 Submissions p S409 (AEC)

20 Submissions p S407 (AEC)

21 Submissions p S415 (AEC)

22 Submissions p S2509 (AEC)

## Recount procedures

- 4.18 At any time after the close of polls to the declaration of the seat, any candidate can request a recount of the votes. Section 279 of the Electoral Act also provides the Electoral Commissioner or the Australian Electoral Officer with a discretionary power to direct a recount. Any request from a candidate for a recount is assessed on its merits. On a general basis, a request for a recount that did not plead a specific case would be refused. In addition, there needs to be a possibility that the result in the Division would change.<sup>23</sup>
- 4.19 The AEC had already factored in the possibility of a recount in the Division of Bass considering the history of the Division as a very close seat, and had put special arrangements in place to prevent any delays in reaching a result if a recount were required. In the event, the Australian Electoral Officer exercised his discretion and ordered a recount without a request being received on the basis that the result was so close. The recount took place on 13 October 1998 and the seat was declared on 21 October.<sup>24</sup>

## Scrutiny of Senate ballot papers

- 4.20 On election night, the Senate ballot papers are checked for formality, and the first preference above the line count is conducted after the two candidate preferred count for the House of Representatives. As the Senate is elected on a proportional representation system that requires the striking of a numerical quota based on the total number of votes cast, it is not possible to begin the Senate distribution of preferences until all votes, including postal votes, have been received. Even so, the formality check of ballot papers begins soon after polling day.<sup>25</sup>
- 4.21 In the past, the Senate scrutiny has taken up to two months in the larger states. However, following amendments to the Electoral Act in 1998, the Senate scrutiny is now computerised, which allowed the delivery of all Senate results by 29 October 1998, about three weeks after polling day.<sup>26</sup>
- 4.22 The computerised scrutiny of the Senate ballot has changed the traditional physical access scrutineers have had in the past to the striking of the quota and the allocation of preferences for the Senate as this occurs inside the

---

23 Submissions p S409 (AEC)

24 Submissions p S409 (AEC)

25 Submissions pp S409-S410 (AEC)

26 Submissions p S410 (AEC)



computer. Scrutineers are, however, provided with reports on the computerised scrutiny progress.<sup>27</sup>

- 4.23 In the year leading up to the introduction of the computerised Senate scrutiny system, the AEC ensured that the major political parties and other interested parties were fully briefed on the computer program and relevant procedures.<sup>28</sup>
- 4.24 The system inputs and verifies the information on each Senate ballot paper and determines formality. A large number of Personal Computers are installed in each state and territory to accommodate this. When all the ballot paper information has been entered, the system then distributes preferences to provide a list of Senators elected for each state and territory. The AEC reports there is a considerable saving in staff time and resources using this system.<sup>29</sup>

## National tally room

- 4.25 The AEC replaced both its telecommunication and hardware network before the 1998 federal election. At the time the AEC was developing this plan, the government released its initiative in relation to outsourcing of government IT. As a consequence, the AEC mainframe, mid range and desktop computer systems were successfully outsourced to Computer Sciences Corporation.<sup>30</sup>
- 4.26 Computer Sciences Corporation provided a new telecommunications network for the AEC, and embarked on a program of upgrading all Personal Computers and printers. Prior to the election, the new system underwent significant testing, and the AEC was satisfied that it was more reliable than the system it replaced.<sup>31</sup>
- 4.27 The new system was used on election night to collect and transmit voting information to the media and others in the National Tally Room. The system also provided data feeds to the major television networks and Australian Associated Press, as well as providing terminals for the Prime Minister and Opposition Leader. The election system did not present any difficulties during the night and was able to provide enough quality information for the ABC to predict the election result by 8.00pm EST.<sup>32</sup>

---

27 Submissions p S410 (AEC)

28 Submissions p S410 (AEC)

29 Submissions p S410 (AEC)

30 Submissions p S411 (AEC)

31 Submissions p S411 (AEC)

32 Submissions pp S411-S412 (AEC)

- 4.28 The 1998 federal election saw the National Tally Room returned to its traditional location at Exhibition Park in Canberra. There was greater representation by the media at this National Tally Room than at any previous election. The construction of the National Tally Room ran very smoothly, partially as a result of the consultations and briefings with the media organisations.<sup>33</sup>
- 4.29 The AEC had various failsafe measures in place in the event of a computer breakdown. Communication links were duplicated through different Telstra exchanges, and the power source was also duplicated. In addition, there was a manual telephone and fax backup system should the computer system fail. The full computer and backup systems were tested at the AEC rehearsal for the election on the Thursday before polling day.<sup>34</sup>
- 4.30 On the night at the National Tally Room there were approximately 400 members of the print and radio media; 300 members of the television media; 100 political party representatives; 130 AEC and other staff; and a group of 30 overseas electoral observers. During the evening 2,500 members of the public also visited the National Tally Room.<sup>35</sup>
- 4.31 The Committee notes that there continues to be concern about the broadcast of election trends and results while Western Australian polling places are still open, a problem caused by the time zones across Australia. The problem is further exacerbated for elections held during daylight saving.<sup>36</sup> The Committee can see no simple solution to the problems caused by different time zones.

## Compulsory voting

- 4.32 Compulsory voting was first introduced for federal elections in Australia in 1924. As a result, voter turnout increased from 57.9% in 1922, to 91.3% in 1925, and has not fallen below 90% since that time.<sup>37</sup> At the 1998 federal election, 95.34% of the 12,154,050 enrolled electors voted.<sup>38</sup>
- 4.33 A number of submissions were received in the inquiry in regard to compulsory voting. G W Spence and Mr A Beeney advocate the retention of compulsory voting.<sup>39</sup> These submissions argue that it is the duty of

---

33 Submissions p S412 (AEC)

34 Submissions p S412 (AEC)

35 Submissions p S412 (AEC)

36 Correspondence (Senator A.Murray)

37 Submissions p S1203 (AEC)

38 Submissions p S327 (AEC)

39 Submissions pp S2 (A.Beeney) and S214 (G.W.Spence)

each citizen to vote to elect the government. Compulsory voting allows the entire electorate to feel they have a degree of ownership in government and its decisions. It therefore goes some way towards avoiding marginalisation, hostility and a sense of remoteness. The Liberal Party, the Australian Labor Party, the Australian Democrats and Pauline Hanson's One Nation Party also formally support compulsory voting at federal elections.<sup>40</sup>

- 4.34 The majority of submissions received that canvassed this issue were in favour of repealing compulsory voting. There is a concern that indifferent and apathetic voters may alter the end result of an election.

... In the past, some political candidates have just scraped into parliament because of a sufficient number of apathetic and indifferent votes...<sup>41</sup>

Instead, these submissions argue that voting should be voluntary and therefore elections would be decided by those Australians who take a genuine interest in the outcome and are concerned about the direction and future of this country.<sup>42</sup>

- 4.35 There is also concern that compulsory voting is not democratic.<sup>43</sup> It is argued that there are very few countries in the world where voters are compelled to vote and all citizens should have a democratic choice to vote or not vote. The Committee notes, however, that while s245(1) of the Electoral Act reads, "It shall be the duty of every voter to vote at each election", it has never been an offence under the Electoral Act to cast an informal vote in the privacy of the voting compartment. Whether the vote is cast formally or informally, the action involved can be regarded as 'voting' for the purposes of the Act.<sup>44</sup> Therefore, the voter effectively has the option of lodging a protest vote by lodging an informal vote.
- 4.36 Although there are strong views regarding compulsory voting, this Committee has no plans to pursue the issue of voluntary voting.

---

40 Submissions p S773 (Liberal Party); Transcript pp 33 (ALP) and 323 (Office of the Leader of Pauline Hanson's One Nation Party Qld Parliament); and Joint Standing Committee on Electoral Matters. 1997. *The Federal Election: Report of the Inquiry into the conduct of the 1996 Federal Election and matters related thereto*. Canberra, AGPS, pp 138-146.

41 Submissions p S60 (A.Emms)

42 Submissions pp S60 (A.Emms), S138A (H.E.Morgan), S229 (R.Kowald), S230 (D.Kitto), S314, S1843 (A.Tuck), S651 (K.Lane), S709 (R.Provan), S1123 (J.Knoss) and Transcript p 315 (J.Stewart)

43 Submissions pp S141 (G.Maskell), S203 (G.Bradney), S207 (N.Kendall), S254 (L.Franzman), S261 (A.Adams), S667 (M.Goldstiver) and S674 (E.Hale)

44 Submissions p S1683 (AEC)

## The full preferential voting system

4.37 Section 240 of the Electoral Act provides for full and consecutive marking of preferences on House of Representatives ballot papers. The section reads as follows:

- (1) In a House of Representatives election a person shall mark his or her vote on the ballot-paper by:
  - (a) writing the number 1 in the square opposite the name of the candidate for whom the person votes as his or her first preference; and
  - (b) writing the numbers 2, 3, 4 (and so on, as the case requires) in the squares opposite the names of all the remaining candidates so as to indicate the order of the person's preference for them.
- (2) The numbers referred to in paragraph (1)(b) are to be consecutive numbers, without the repetition of any number.

## Misunderstanding of full preferential voting system

4.38 It is apparent from many of the submissions received that there is widespread misunderstanding amongst Australian voters about how the full preferential system of voting actually works. Common misconceptions include:

- a misunderstanding of how preferences are distributed after the first count, with a common belief that a voter's last preference can be awarded a full vote;
- the belief that the provisional two candidate preferred count on polling night immediately disqualifies all minor parties and independents;
- a belief that a voter must follow exactly the How To Vote card or their vote will be counted as informal;
- voting at federal elections is not compulsory for those over the age of seventy; and
- there also continues to be confusion amongst Australian voters about what constitutes a valid vote in a federal election, particularly in view of the differing voting requirements at state and local government elections.

4.39 The Committee acknowledges the extensive public awareness campaign carried out by the AEC prior to the 1998 federal election (outlined in Chapter 2 of this report), but believes there is a need for a more targeted

education campaign prior to the next federal election to alleviate some of the confusion which currently exists, particularly in relation to the full preferential voting system.

## Recommendation 42

- 4.40 **That the AEC conduct targeted public education programs prior to the next federal election, to more fully explain the full preferential voting system for the House of Representatives.**

## Concern with current voting system

- 4.41 Linked to this misunderstanding of the full preferential voting system, is concern by a large number of people that an electoral system that produced results such as those in the 1998 federal election is deeply flawed.<sup>45</sup> There is a strong belief that:

...something is radically wrong and unfair...<sup>46</sup>

with the current system of full preferential voting. It is argued that:

...the present system is specifically designed to favour the major parties...<sup>47</sup>

and is unfair to minor parties as can be proved by the fact that despite recording over a quarter of the vote, the minor parties received no seats in the House of Representatives. In other words, 25% of Australians who did not vote in favour of the major parties have received no representation in the House of Representatives under the present electoral system.<sup>48</sup>

- 4.42 One Nation was a party singled out as the main victim of the current system. There was outrage by many submitters that One Nation polled third in the national primary count, taking 8.5% (approximately 1 million votes) of national primary votes, yet received no seats in the House of Representatives and only one seat in the Senate.<sup>49</sup> Over 120 letters which were of several similar styles were received during the 1998 federal election inquiry in relation to this issue. A list of these letters is at

45 Submissions pp S288 (A.Hine), S580 (A.Hoile), S640 (W.Latimer) and S1101 (J.Pilarcik)

46 Submissions p S673 (E.Hale)

47 Submissions p S540 (J.DeFredrick)

48 Submissions pp S1 (A.Beeney) and S602 (J.Johnson)

49 Submissions pp S10 (B.Usher), S53 (D.Haselgrove), S64 (B.Boag), S167 (Monarchist Association of South Australia), S188 (Argus International Pty Ltd), S231 (D.Kitto), S237 (D.McNaughton), S258 (O.Darmanin), S288 (A.Hine), S308 (J.McEwen), S314, S1842 (A.Tuck), S541 (J.Turner JP), S573 (L.Shields), S578 (J.Russell), S673 (E.Hale), S1118 (Pauline Hanson's One Nation South Australia) and S1824 (Office of the Leader of Pauline Hanson's One Nation Party)

Appendix B. The result of One Nation was contrasted to other minor parties such as the Democrats and Nationals who obtained a considerable lesser number of primary votes but gained a greater number of seats.

There is something desperately wrong with a voting system where a particular party could get 8.5% of the vote and have no one elected to Parliament and then on the other hand a party can get just over 5% of the vote and have 14 people elected to the House of Representatives...<sup>50</sup>

...We all feel cheated and forgotten by all levels of government.<sup>51</sup>

4.43 There was a particular focus on what many consider an unfair result in the seat of Blair, in which Pauline Hanson led at the first preference count but was subsequently overtaken by the Liberal candidate during the distribution of preferences.<sup>52</sup>

4.44 Many submitters strongly believe the current preferential voting system is open to manipulation and abuse by the major parties.<sup>53</sup> There is a common belief amongst many One Nation supporters that:

...this unfair election result was deliberately and skilfully orchestrated by the established parties to keep out One Nation...<sup>54</sup>

Many One Nation supporters believe the current system enabled all the established parties to 'gang up' against the One Nation Party by directing preferences against them by putting One Nation last on their How To Vote cards and advocating publicly, via the mass media, to place One Nation candidates last on the ballot papers.<sup>55</sup>

4.45 The Committee points out that because of single-member constituencies and the preferential voting system there is not necessarily a direct relationship between the total primary votes cast and the number of seats

---

50 Submissions p S1123 (J.Knoss)

51 Submissions p S254 (L.Franzman)

52 Submissions pp S64 (B.Boag), S138A (H.Morgan), S141 (G.Maskell), S174 (Pauline Hanson's One Nation Logan Branch), S253 (L.Franzman), S541 (J.Turner JP), S593 (P&E.Bingle), S596 (B.Hudson), S606 (C.Bevan), S615 (P.Read), S652 (E.Addision-Baker), S673 (E.Hale), S1109 (M.Horsburgh), S1118 (Pauline Hanson's One Nation Party South Australia) and S1338 (C.Turner)

53 Submissions pp S600 (V.Patricky) and S1343 (K.Lawson)

54 Submissions p S53 (D.Haselgrove)

55 Submissions pp S10 (B.Usher), S22 (A.Usher), S53 (D.Haselgrove), S64 (B.Boag), S182 (J.Nicholas), S207 (N.Kendall), S218 (H.Bolles), S258 (O.Darmanin), S276, S279, S293 (VALUE), S538 (L.DeFrederick), S539 (J.DeFrederick), S541 (J.Turner JP), S607 (Pauline Hanson's One Nation Victor Harbour Branch), S612 (Pauline Hanson's One Nation Brisbane Central Branch), S614 (K.McSweeney), S615 (P.Read), S652 (E.Addision-Baker), S689 (V.Stewart), S706 (G&M.Hoal), S709 (R.Provan), S1101 (J.Pilarcik), S1104-S1105 (Patriotic Movement of Australia) and S1109-S1110 (M.Horsburgh)

won. Each seat is determined according to the individual votes in that individual electorate.

## Alternative voting systems

4.46 The concerns with the current voting system led many submitters to suggest alternatives to the current full preferential system of voting.

### Optional preferential voting

4.47 The vast majority of submitters offering alternatives to the current system of voting argue in various ways for the introduction of optional preferential voting for both the Senate and the House of Representatives at federal elections.<sup>56</sup> Optional preferential voting means that the voter is required to put a '1' against the candidate of their choice, but is given the option to number preferences to the extent that they consider appropriate.

4.48 The arguments for optional preferential voting have a long history. Two former Electoral Commissioners, Mr Brian Cox and Dr Colin Hughes, have put their personal support behind such changes in submissions to previous electoral inquiries.<sup>57</sup>

4.49 Mr Antony Green argues that it is logically inconsistent to introduce voluntary voting without also introducing optional preferential voting.<sup>58</sup> The AEC concurs with this argument.

4.50 Mr Green is a strong advocate of optional preferential voting, arguing that the introduction of optional preferential voting may help to overcome some of the disenchantment with the political process and allow voters to express dissatisfaction with the major parties.<sup>59</sup> He also believes that full

---

56 Submissions pp S2 (A.Beeney), S38 (S.Gilchrist), S48 (A.Vaughan), S54 (D.Haselgrove), S63 (R.Shaw), S202 (J.Underhill), S205 (D.Carrington-Smith), S223 (G.Wadsworth), S261 (A.Adams), S277, 279, 293, 1835, 1901 (VALUE), S308 (J.McEwen), S313, S1841 (A.Tuck), S558 (A.Beckett) S568 (S.Jackson), S575 (P.Daly), S592 (H&M.Whitton), S595 (J.Thamm), S616 (W.MacMillan), S619 (G.Grant), S638 (L.Bauer), S640 (W.Latimer), S642, S1846 (J.Dwyer), S648 (C.Griffith), S651 (K.Lane), S673 (E.Hale), S680 (Pauline Hanson's One Nation Nambour and District Branch), S689 (V.Stewart), S691 (Office of the Leader of Pauline Hanson's One Nation Qld Parliament), S694 (F.Gregg), S695 (Pauline Hanson's One Nation Oakey Branch), S696 (S.Gregg), S707 (G&M.Hoal), S1107 (Patriotic Movement of Australia), S1823 (Office of the Leader of Pauline Hanson's One Nation Party) and Transcript pp 311 (J.Stewart), 322 (Office of the Leader of Pauline Hanson's One Nation Qld Parliament), 359-360 (J.Dwyer), 374 (Patriotic Movement of Australia), 379 (J.Hugo), and numerous letters listed at Appendix B.

57 Submissions p S1131 (AEC) and Transcript p 98 (B.Cox)

58 Submissions p S282 and Transcript p 399 (A.Green)

59 Submissions p S283 and Transcript pp 399-401 (A.Green)

preferential voting increases the likelihood of voters resorting to copying How To Vote cards or 'donkey' voting when faced with ten or twelve candidates.<sup>60</sup>

- 4.51 The vast majority of submissions recommending the introduction of an optional preferential system are One Nation supporters who often mistakenly believe that the current system disadvantages their party. Many feel that:

... electors are being denied their choice of a representative in Parliament through the preference system. At nearly every election it can be seen that the candidate gaining the most primary votes in an electorate is beaten by the preferences.<sup>61</sup>

Many voters, therefore, object to the full preferential system as it allows their vote to indirectly elect a candidate from either of the two major parties as preferences are distributed.<sup>62</sup>

As a voter I was angry and annoyed that I was forced to indirectly elect someone whom I consciously rejected...<sup>63</sup>

... We wonder how many Australians know who they actually voted for?<sup>64</sup>

- 4.52 A number of submitters also believe that full preferential voting is undemocratic and impinges upon freedom of political expression and freedom of choice as it forces voters to preference all candidates.<sup>65</sup> It is felt by many that the individual should not be required to give even their last vote to a party they are totally opposed to.<sup>66</sup>
- 4.53 Ms Williams prefers optional preferential voting because it allows voters to vote only for those candidates about which they have some

---

60 Submissions p S282 (A.Green)

61 Submissions p S182 (J.Nicholas)

62 Submissions pp S187 (Argus International Pty Ltd), S204 (D.Carrington-Smith), S223 (G.Wadsworth), S571 (C.Gibson), S573 (L.Sheilds), S584 (L.Johnson), S620 (G.Grant), S669 (D.Perham), S670 (K.Briggs), S680 (Pauline Hanson's One Nation Nambour & District Branch), S690 (Office of the Leader of Pauline Hanson's One Nation Qld Parliament), S708 (M.Sawers), S709 (R.Provan) and S1105 (Patriotic Movement of Australia)

63 Submissions p S689 (V.Stewart)

64 Submissions pp S262 and S577 (Mr&Mrs Baker)

65 Submissions pp S29 (M.Fallis), S32 (S.Gilchrist), S43 (M.Domjanovic), S53 (D.Haselgrove), S59 (A.Emms), S138A (H.Morgan), S139 (D.Knochs), S141 (G.Maskell), S163 (E.Betteridge), S165 (Monarchist Association of South Australia), S202 (J.Underhill), S219 (A.Ellison), S229 (R.Kowald), S262, S577 (Mr&Mrs Baker), S538 (L.DeFredrick), S541 (J.Turner JP), S558 (J.Beckett), S578 (J.Russell), S616 (W.MacMillan), S647 (C.Griffith), S669 (D.Perham), S673 (E.Hale), S687 (M.Horne), S689 (V.Stewart), S694 (F.Gregg), S696 (S.Gregg), S706 (G&M.Hoal), S1123 (J.Knoss) and S1124 (B.Ingle)

66 Submissions pp S43 (M.Domjanovic), S540 (J.DeFredrick) and S699 (D.Holmes)



information. With the increasing number of candidates and the paucity of information about many of the smaller parties, Ms Williams feels that there is no reason why votes should have to preference these people.<sup>67</sup>

- 4.54 Some people called for optional preferential voting to be introduced specifically when marking preferences below the line on the Senate ballot paper, particularly given that preferencing all candidates below the line is becoming increasingly more difficult and time-consuming.<sup>68</sup> As a result, there is an increased chance of an informal vote and, often, voters are taking the easier alternative and opting for above the line voting.
- 4.55 The Committee notes these arguments for optional preferential voting and particularly acknowledges Mr Green's argument regarding the consistency of introducing both voluntary voting and optional preferential voting at the same time. The Committee, however, believes that there is a strong chance that an optional preferential system will eventually lead to voters casting only one preference as the realisation sinks in to voters that, to indicate second and subsequent preferences, will decrease the possibility that their most preferred candidate will win. The Committee, therefore, is unconvinced that the introduction of optional preferential voting will not result in a defacto first past the post system where candidates can be elected with significantly less than half the vote.

## Langer-style voting

- 4.56 In 1983, a wide ranging review of the Electoral Act was conducted by the Joint Select Committee on Electoral Reform. One result of this review was an amendment to s270 of the Electoral Act to allow a House of Representatives ballot paper to be counted as formal if a full set of preferences were expressed by the voter, but there were non-consecutive numbering errors. In order to prevent this clause from being used as an excuse to deliberately cast an optional preferential vote, s329(3) was also added to the Electoral Act to make it an offence to encourage such a vote. During the 1996 federal election, Mr Albert Langer attempted to exploit s270 of the Electoral Act by encouraging this form of voting as a way of casting an optional preferential vote.<sup>69</sup>

---

67 Submissions p S86 (H.Williams)

68 Submissions pp S31 (S.Gilchrist) and S668 (M.Goldstiver)

69 Australian Electoral Commission. 1998. *Electoral Background, No 7*. Canberra, AEC, pp 2-3.

- 4.57 Many submissions call for a Langer-style vote.<sup>70</sup> These calls are often based on a misunderstanding that the changes made to the Electoral Act on 17 July 1998 to make illegal the Langer-style vote, were passed deliberately and quietly just before the 1998 federal election with no publicity, public debate or media analysis, to keep out One Nation.<sup>71</sup> Many believe the change to the Electoral Act had a detrimental effect on One Nation's ability to win seats.<sup>72</sup>
- 4.58 The fact is that Langer-style voting was a way of voting which formerly exploited a loophole in the Electoral Act. It has been an issue for several elections now and was considered by the JSCEM inquiry into the conduct of the 1996 federal election, involving extensive written submissions and public hearings over a period of about a year. Langer-style voting was explicitly addressed in the recommendations for legislative amendments contained in the 1996 federal election inquiry report, and the Bill to amend the legislation was introduced in Parliament on 3 December 1997 and passed on 17 July 1998. That is, the Langer amendments were analysed and debated, on the public record, over a period of two years before they were made into law.<sup>73</sup>
- 4.59 In addition, immediately on the passage of the *Electoral and Referendum Amendment Act 1998* on 17 July 1998, the AEC published an Electoral Backgrounder (No 7) entitled "Langer-style voting", which explained the concept of full preferential voting and its legislative history, including the effect of the amending legislation on Langer-style voting. The AEC went to considerable lengths to try to ensure that information on the legislative

---

70 Submissions pp S163 (E.Betteridge), S199 (A.Thornely), S202 (J.Underhill), S203 (G.Bradney), S223 (G.Wadsworth), S230 (D.Kitto), S260 (E.Vaughan), S262 (Mr & Mrs Baker), S272 (J.Dobson), S288 (A.Hine), S313 (A.Tuck), S539 (J.DeFrederick), S577 (L&B.Baker), S584, S2075 (L.Johnson), S598 (A&E.Betteridge), S673 (E.Hale), S677 (A.DiSanto), S690 (Office of the Leader of Pauline Hanson's One Nation Party) and S1094 (P.Cork)

71 Submissions pp S53 (D.Haselgrove), S165 (Monarchist Association of South Australia), S174 (Pauline Hanson's One Nation Logan Branch), S199 (A.Thornely), S204-S205 (D.Carrington-Smith), S223 (G.Wadsworth), S237 (D.McNaughton), S253 (L.Franzman), S261 (A.Adams), S262, S577 (Mr&Mrs Baker), S263 (D.Bruderlin), S289 (J.Hugo), S313 (A.Tuck), S538 (L.DeFrederick), S539 (J.DeFrederick), S541 (J.Turner JP), S558 (J.Beckett), S570 (K.Briggs), S573 (L.Sheilds), S578 (J.Russell), S580 (A.Hoile), S584 (L.Johnson), S592 (H&M.Whitton), S593 (P&E.Bingle), S596 (B.Hudson), S597 (D.Bruderlin), S598 (A.Betteridge), S606 (C.Bevan), S607 (Pauline Hanson's One Nation Victor Harbour Branch), S615 (P.Read), S618 (Pauline Hanson's One Nation Wavell Branch), S647 (C.Griffith), S649 (R.van de Wiel), S651 (K.Lane), S667 (M.Goldstiver), S669 (D.Perham), S677 (A.Di Santo), S687 (M.Horne), S694 (F.Gregg), S696 (S.Gregg), S697 (G.Williamson), S704 (I.Nelson), S709 (R.Provan), S1105 (Patriotic Movement of Australia), S1123 (J.Knoss) and S1124-5 (B.Ingle)

72 Submissions pp S53 (D.Haselgrove), S237 (D.McNaughton) and S311 (J.Stewart)

73 Submissions p S1132 (AEC)

changes was widely distributed and understood by the electorate at large.<sup>74</sup>

- 4.60 The Committee feels this issue has been dealt with sufficiently and does not intend to pursue it any further.

### Above the line voting in the Senate

- 4.61 Above the line ('group ticket') voting was introduced in 1984 allowing the voter to mark one preference for a particular party above the line rather than marking preferences for all candidates below the line. Such a vote would automatically follow the party's set distribution of preferences.

- 4.62 There are some concerns about the above the line voting system in the Senate with a number of submitters arguing for the elimination of above the line voting. It is felt that independents are discriminated against under such a system.<sup>75</sup> An ungrouped candidate is unable to have a box above the line and is also not included in the ballot draw for a position on the voting papers below the line but is automatically placed at the right-hand corner of the ballot paper. Mr Jonathon Polke, who ran as an independent candidate in the Northern Territory at the 1998 federal election describes the system as:

...appallingly undemocratic because it was impossible for me to attract the votes of those who did not wish to vote below the line.<sup>76</sup>

- 4.63 There is also concern that such a system gives political parties a great deal of power to direct preferences to not only select their own party candidates, but also to influence who else gets into the Senate, with the ability to exclude or favour a particular candidate. This results in the majority of Senate vacancies being filled by the will of the political parties rather than the voters.<sup>77</sup>

- 4.64 Another common concern with the above the line voting system is raised by J Moller who points out that:

...to vote above the line for a specified group of candidates is often a blind vote since many voters may be unaware of the group's proposed preference distribution.<sup>78</sup>

---

74 Submissions p S1132 (AEC)

75 Submissions pp S15 (D.Gudgeon), S48 (A.Vaughan BE), S294 (M.McClure), S628 (E.Lockett), S1467 (J.Polke), S1471 (N.Jamieson) and S1849 (VALUE)

76 Submissions p S1467 (J.Polke)

77 Submissions pp S15 (D.Gudgeon), S30 (M.Fallis), S48 (A.Vaughan), S96 (Australian Democrats Gold Coast Branch), S571 (C.Gibson), S630 (E.Lockett), S668 (M.Goldstiver), S1471 (N.Jamieson) and S1843 (A.Tuck)

78 Submissions p S251 (J.Moller)

It appears information on group voting tickets is not reaching many voters despite the requirement under the Electoral Act for Senate group voting tickets to be prominently displayed, in a poster format, at each polling booth.

- 4.65 The AEC believes the poster format is not appropriate any longer given that the ever-increasing size of the poster makes it both difficult to handle and display in the 7,775 polling booths across Australia, all varying in size and design, and difficult for voters to consult conveniently. Further, it is impractical and expensive to post group voting ticket posters to each individual voter who does not cast a vote in a polling place.<sup>79</sup>
- 4.66 The AEC is of the view that posters should be replaced by group voting tickets in a booklet format. Instead of the Senate ballot paper format, the AEC would prefer a simple column arrangement with candidate names down the left side and party/group name and ticket number across the top, with the preferences shown accordingly in each column. Such a booklet would be much easier to display at the polling booth, could be provided on request to voters for easy consultation, and could be posted to voters who are unable to attend a polling booth.<sup>80</sup>
- 4.67 The Committee notes the acceptance of the above the line voting system, that was preferred by 94.9% of voters in the 1998 federal election.<sup>81</sup> The Committee does, however, believe that voters need to have more ready access to where above the line voting preferences are to be distributed. An effective first step in providing voters with easier access to group voting ticket information would be the AEC's suggestion of displaying group voting tickets in a booklet format. Such a booklet could more easily be provided to electors who request it on or before polling day and to those who are unable to attend a polling booth.

---

### **Recommendation 43**

- 4.68 **That section 216 of the *Commonwealth Electoral Act 1918* be amended so that group voting ticket information can be provided in booklet format rather than in poster format.**

---

79 Submissions p S380 (AEC)

80 Submissions p S380-S381 (AEC)

81 Australian Electoral Commission. 1999. *Election Results – National Results Vol 1*, AEC, p 80.

## Other alternative voting systems

- 4.69 A number of submissions were received proposing various other alternative voting systems to replace the full preferential voting system.

### First past the post system:

- 4.70 A number of submissions were received advocating the introduction of a 'first past the post' voting system where the candidate with the most primary votes wins.<sup>82</sup>
- 4.71 The Committee points out that under such a system a candidate can be elected even if a majority of voters regard that candidate the worst in the ballot. The Committee, therefore, agrees with Mr Spence who argues that the first past the post system is undemocratic as a member may be totally unrepresentative of the majority of an electorate.<sup>83</sup>

### Proportional voting system:

- 4.72 A number of submissions argue that a system of proportional representation should be introduced into the House of Representatives to ensure that each political group's share of the total vote is more accurately reflected in the composition of the House of Representatives.<sup>84</sup>
- 4.73 The Committee does not believe that a proportional representation system in the House of Representatives would be conducive to the stability of government. In addition, the Australian public is very accustomed to having a local Member of Parliament who is easily accessible and readily available to them.

### Primary vote quota system for the Senate:

- 4.74 Mr Antony Green is concerned that since the introduction of ticket voting, the electoral system in the Senate has the potential problem of allowing minor parties to gain election through engaging in complex preference deals despite receiving only a fraction of a quota of primary votes. To avoid such a situation arising, particularly in the event of a double dissolution, Mr Green suggests another step be included in the Senate count, after the initial distribution of surpluses, at which stage all candidates of parties which had less than half a quota would be excluded.

---

82 Submissions pp S14 (D.Gudgeon), S45 (M.Damjanovic), S138A (H.Morgan), S203 (G.Bradney), S258 (O.Darmanin), S600 (V.Patricky), S651 (K.Lane), S699 (D.Holmes), S706 (G&M.Hoal), S1094 (P.Cork), S1100 (E.Farear) and S1348 (K.Lawson)

83 Submissions p S213 (G.Spence)

84 Submissions pp S22 (A.Usher), S94 (N.Peck), S95-S96 (Australian Democrats Gold Coast Branch), S181 (E.Laurilla), S207 (N.Kendall), S230 (D.Kitto), S308 (J.McEwen), S596 (B.Hudson), S606 (C.Bevan), S656 (The Electoral Reform Society of South Australia) and S707 (G&M.Hoal)

Such a minimum quota system would reward minor parties that build support by agreeing on common platforms and candidates, and campaign for votes instead of preferences.<sup>85</sup>

- 4.75 The AEC has responded by stating that the problem with thresholds of this type is that the level at which they are set is essentially arbitrary. A consequence of such thresholds is that a body of opinion in the community may fail to be represented purely because votes in support of that opinion are divided among two or more parties, none of which reaches the threshold.<sup>86</sup>
- 4.76 The Committee cannot see that introducing such an arbitrary quota system would be an effective solution to the problem. Instead, the measures recommended in Chapter 5, which if implemented will make it more difficult to register as a party, should assist in preventing the mushrooming of numbers of political parties that has taken place at the state level. The Committee could revisit this issue in a future inquiry if the recommendations in Chapter 5 to strengthen the process of registering as a political party prove to be ineffective.

**Random/rotated ballot papers:**

- 4.77 Some submitters advocate random listing of candidates and names rotated on the ballot papers<sup>87</sup> as it is argued that:
- ...there would appear to be no valid or unbiased reason to set the placement of candidates names, or groups, on the ballot paper in a preferential way.<sup>88</sup>
- 4.78 The Committee notes in response that the adoption of the 'Robson Rotation' system on ballot papers was considered and rejected by the previous JSCEM on the grounds that:
- ...the provision of effective How To Vote material is the reason why the Committee is not enthusiastic about rotation of names on ballot papers, often put forward as a means of minimising the effects of 'donkey' voting (whereby uninterested voters simply mark '1,2,3,4...' straight down the ballot paper)...<sup>89</sup>
- 4.79 The Committee concurs with this finding and sees no reason to change the current system.

---

85 Submissions pp S284-S287, S1913 (A.Green)

86 Submissions p S1151 (AEC)

87 Submissions pp S49 (A.Vaughan), S212 (G.Spence) and S1472 (N.Jamieson)

88 Submissions p S49 (A.Vaughan)

89 Joint Standing Committee on Electoral Matters. 1997. *The Federal Election: Report of the Inquiry into the conduct of the 1996 Federal Election and matters related thereto*. Canberra, AGPS, p 94.

**'None of the above' box:**

- 4.80 Three submissions were received suggesting that voters be offered a separate box at the bottom of each ballot paper called 'none of the above' which would be counted separately from the informal vote.<sup>90</sup>

The 'none' vote would force the major contenders to think seriously about ways to reach people like me, who aren't happy with any of the options on offer.<sup>91</sup>

**Citizens initiated referendum:**

- 4.81 A number of submissions called for some form of Citizens Initiated Referendum such as is practiced in Switzerland.<sup>92</sup> It was suggested that, especially on moral and ethical issues, such a system, using some form of phone-in voting, would allow for direct input into new laws.<sup>93</sup>

**Weighted preferential system:**

- 4.82 A number of submissions suggested a weighted preferential voting system, allocating a weighted value to each preference vote a candidate received based on where that preference was on the ballot paper.<sup>94</sup>

**Electronic voting:**

- 4.83 A number of submitters feel that the use of a fully computerised system with electronic voting will reduce costs and staffing required, improve efficiency, accuracy and security and prevent fraud.<sup>95</sup> Quite a large number suggested the AEC make use of the TAB electronic betting grid which is available in every state and territory in Australia for voting electronically.<sup>96</sup>
- 4.84 The Committee does not believe that a computerised system would be an effective measure against security, fraud and efficiency concerns at this time. The concerns voiced by the AEC in their submission to the inquiry into the 1996 federal election are still valid.

With the current levels of technology and a full preferential voting system in Australia, computerised voting is less practical than

---

90 Submissions pp S26 (P.Norris), S591 (D.Jones) and S710 (R.Provan)

91 Submissions p S26 (P.Norris)

92 Submissions pp S188 (Argus International Pty Ltd), S200 (A.Thornely), S224 (G.Wadsworth), S667 (M.Goldstiver), S710 (R.Provan), S1350 (K.Lawson) and S1472 (N.Jamieson)

93 Submissions pp S188 (Argus International Pty Ltd) and S200 (A.Thornely)

94 Submissions pp S30 (M.Fallis), S248-S251, S1856 (J.Moller) and S1307 (A.Belford)

95 Submissions pp S275 (G.Lee), S276, S278, S292 (VALUE), S308 (J.McEwen), S1095 (P.Cork), S1308 (A.Belford), S1348 (K.Lawson) and S1358 (M.Maleki)

96 Submissions pp S1095 (P.Cork), S1308 (A.Belford) and S1349 (K.Lawson)

paper-based methods. To devise a computerised voting system which could accommodate full preferential voting would require sophisticated and totally reliable computing facilities. In addition, voters would have to handle the equipment, which, even in its simplest forms, would be difficult for a great many voters, especially the elderly and those with poor literacy and numeracy skills.<sup>97</sup>

- 4.85 In addition to this, while computerised voting may ensure the result of an election being known within minutes of the poll closing, the Committee cannot justify the level of public expenditure required to computerise the voting system given that the result in the House of Representatives was clear by 8pm on election night, only two hours after the close of poll for the 1998 federal election.

#### **Independent candidates elected to Senate:**

- 4.86 Ms Jamieson suggests that the Senate, as the government's house of review, would best serve Australia if all members were elected as independents, thus unbiased and unfettered by party politics and, preferably, party affiliation. Scrutiny of legislation, policies and administration would be more effective, with less chance of party policies being 'rubber-stamped.'<sup>98</sup>

## **Conclusion**

- 4.87 The Committee notes the contributions of many of the submissions suggesting alternative voting systems, particularly those suggesting optional preferential voting for the House of Representatives, but has not been persuaded that any of the proposed systems would prove more suitable than the full preferential system currently in place. The current system provides for stable majority government in the House of Representatives, coupled with a Senate elected by a proportional representative voting system, with each State having equal representation. While the single-member constituency system in the House of Representatives does not necessarily ensure a direct relationship between seats won and percentage of primary votes across the country, it does have the advantage of offering all Australians ready and easy access to a local Member of Parliament. The Committee therefore agrees with the view of G W Spence who said:

...while our proportional representation and preferential voting systems together with compulsory voting is not perfect, they are

---

97 Submissions p S1229 (AEC)

98 Submissions p S1471 (N.Jamieson)



probably the best systems available to achieve, as near as possible, a majority view of who should form the government of this country.<sup>99</sup>



## Other issues

### Funding and disclosure

#### Funding entitlements

- 5.1 Part XX of the *Commonwealth Electoral Act 1918* (Electoral Act) provides for public funding of election campaigns to be made available to candidates and political parties who receive at least four per cent of the formal first preference vote. This funding ensures candidates are not disadvantaged in their appeal to electors or unduly influenced in their subsequent actions by lack of access to adequate funding.
- 5.2 Mr and Mrs Whitton, Mr Arthur Tuck and Mr Goldstiver call for the elimination of public funding to political parties for election campaigns.<sup>1</sup> G W Spence and Mr Lockett suggest a restriction be placed on the amount that can be spent on election campaigns to reduce the amount of public funding necessary.<sup>2</sup>
- 5.3 The public funding entitlements for the 1998 federal election, including the Newcastle supplementary election, totalled \$33,920,787.43. The funding rate was 162.210 cents per vote<sup>3</sup> and this has been paid to party agents and independent candidates as shown in Table 5.1.

---

1 Submissions pp S592 (H&M.Whitton), S667 (M.Goldstiver) and S1844 (A.Tuck)

2 Submissions pp S214 (GW.Spence) and S632-S633 (E.Lockett)

3 Australian Electoral Commission. 1999. *Electoral Pocket Book*, Canberra, AEC, p 57.

Table 5.1 1998 election funding payments

<b>Payee</b>	<b>Amount - \$</b>
Australian Labor Party	13,959,511.97
Liberal Party of Australia	11,488,881.15
National Party of Australia	2,321,589.02
Northern Territory Country Liberal Party	116,916.10
Australian Democrats	2,247,677.46
Australian Greens	147,867.39
The Greens (WA)	172,137.25
Pauline Hanson's One Nation	3,044,525.97
Australia First Party	25,280.43
Australian Shooters Party	8,554.96
Tasmanian Independent Senator Brian Harradine Group	39,342.41
Christian Democratic Party (Fred Nile Group)	5,339.95
Progressive Labour Party	5,054.46
Unity – Say No to Hanson	48,692.20
Peter Andren (Calare, NSW)	47,887.64
Anthony Beck (Barker, SA)	6,464.07
Barry Cunningham (McMillan, VIC)	6,163.98
Robert Ellis (Mackellar, NSW)	7,670.91
Paul Filing (Moore, WA)	23,908.13
Philip Nitschke (Menzies, VIC)	11,100.03
Graham Nuttall (New England, NSW)	10,060.26
Allan Rocher (Curtin, WA)	22,587.74
Margaret Smith (Oxley, QLD)	4,952.27
Anthony Smith (Dickson, QLD)	10,697.75
Douglas Treasure (Gippsland, VIC)	6,611.68
Robert Wilson (Parkes, NSW)	14,042.52
Paul Zammit (Lowe, NSW)	18,978.57
<b>Subtotal</b>	<b>33,822,496.27</b>
<b>Newcastle Supplementary Election Funding Payments</b>	
Australian Labor Party	51,000.45
Australian Democrats	9,095.11
Australian Greens	9,675.83
Pauline Hanson's One Nation	16,976.90
Ivan Welsh	7,134.00
Harry Criticos	4,408.87
<b>Subtotal</b>	<b>98,291.16</b>
<b>TOTAL</b>	<b>33,920,787.43</b>

Source AEC Submission, p S537

- 5.4 Up until, and including, the 1993 election, election funding operated as a strict reimbursement of campaign expenses with the Australian Electoral Commission (AEC) examining the original documentation evidencing campaign expenditure incurred by candidates and political parties. Payment would be the amount of proven expenditure or the full funding entitlement, whichever was the smaller.
- 5.5 The funding scheme was amended after the 1993 election to the present system of automatic entitlement. Under s299 of the Electoral Act, the full funding entitlement is now paid automatically after the voting has been finalised, generally within five weeks after the close of polls. Registered political parties are now required to provide the AEC with evidence of election expenditure at the time of submitting their annual return.
- 5.6 There have been a number of calls, by the Australian Labor Party (ALP) in particular, for a reintroduction of the original reimbursement system for election funding.<sup>4</sup> This has arisen because there is a growing concern that as funding payments are no longer linked to disclosure returns there is the potential for parties and individuals to make a profit out of the election.<sup>5</sup> Wallace Brown, national affairs commentator for the *Courier Mail*, voiced these concerns on 5 February 1999:

In the case of public funding, it is obvious that some parties and people are making money out of the system. They received \$1.62 for each first preference vote they got in the 1998 election and yet did not have to prove the money had been spent during the campaign. Thus the One Nation party spent about \$1.3 million on its campaign but received \$3 million in public funding.<sup>6</sup>

- 5.7 The ALP believes that all political parties or candidates should be required to certify election expenditure within one week after the declaration of the polls and such certification is to be checked and audited by the AEC prior to payment being made.<sup>7</sup> As the ALP said in evidence such a system would:

... provide for the taxpayer of Australia certainty that their money which they provide for us to run election campaigns is properly expended and profiteering of the sort that took place in the federal

---

4 Submissions pp S104 (B.Cox), S783 (ALP) and S1332 (ALP Adamstown Branch)

5 Submissions pp S783 (ALP), S1310 (T.Abbott MP, Member for Warringah), S1332 (ALP Adamstown Branch) and S1336 (T.Briggs)

6 W.Brown, 'Party funding and other touchy political issues', *Courier Mail*, 5 February 1999, p 17.

7 Submissions p S783 (ALP)

election, to the advantage of the One Nation Party ... cannot happen again.<sup>8</sup>

5.8 In response to this, the AEC points out that the reimbursement scheme is not a guarantee that profits could not be made on election funding. Profits can be achieved by various means, all of which involve claiming expenses that would not otherwise have been incurred. For example:

...Contracts could be entered into which evidenced election related expenditure as having been incurred, but did not have to be paid on. Such contracts could be for services which would otherwise be provided on a volunteer basis.<sup>9</sup>

5.9 The Committee believes that it would be a rare occurrence indeed if returning to a funding system based on reimbursement of campaign expenses resulted in payments being anything less than the full entitlements. Therefore, as the AEC has made clear, such a move would realise little if any savings but would simply reimpose another layer of administration and cost and also delay the payment of funding entitlements compared to the present system.

## Disclosure

5.10 Part XX of the Electoral Act also provides for financial disclosure by candidates, registered political parties, associated entities and donors. These disclosure provisions have been in operation since the 1984 election to ensure the transparency and integrity of our political system. Such transparency helps maintain public confidence and is a barrier to corruption of our political processes.

5.11 Registered political parties must submit an annual return disclosing details of amounts received and expenditure incurred during the financial year and all debts outstanding as at 30 June. The returns from associated entities, which are organisations controlled by, or operated wholly or to a significant extent for the benefit of, one or more registered political parties, must also disclose details of receipts, payments and debts along with capital deposits. Donors to a registered party must provide an annual return detailing each donation if the donations to that party total \$1,500 or more for the financial year. Annual disclosure returns are made available for public inspection from 1 February in the following year.

5.12 In addition, following an election, key participants in the electoral process are required to lodge with the AEC various returns disclosing election campaign transactions. Candidates, Senate groups and third parties are

---

8 Transcript p 23 (ALP)

9 Submissions p S425 (AEC)

required to disclose details of donations and electoral expenditure within 15 weeks after polling day while broadcasters and publishers are to disclose details of electoral advertising within eight weeks after polling day. Election disclosure returns are made available for public inspection 24 weeks after polling day.

## Streamlining disclosure

- 5.13 The *Electoral and Referendum Amendment Act 1998* of 17 July 1998 amended the Electoral Act and the *Referendum (Machinery Provisions) Act 1984* to no longer require registered political parties to lodge returns of electoral expenditure, and abolish the requirement to disclose the detail of expenditure in annual returns by political parties and associated entities. It also allowed for registered political parties to lodge their audited accounts in place of the annual return, subject to (a) the accounts containing a level of detail consistent with Part XX of the Electoral Act, and (b) the format of the accounts being approved by the AEC.
- 5.14 The *Electoral and Referendum Amendment Act (No.1) 1999* of 13 October 1999 amending the Electoral Act and the *Referendum (Machinery Provisions) Act 1984* has further simplified and streamlined disclosure requirements by increasing the minimum disclosure threshold for counting individual amounts received by donors to political parties from \$500 to \$1,500.
- 5.15 The Committee acknowledges both the difficulty and necessity of finding a middle ground between imposing an onerous administrative burden on political parties and ensuring that electoral financing is open and transparent.

## Minimum disclosure

- 5.16 Section 314AC of the Electoral Act provides that political parties must disclose a sum of \$1,500 or more received from any one person or organisation during a financial year. To ease administrative burden, the *Electoral and Referendum Amendment Act (No.1) 1999* has increased the threshold for counting individual amounts received from \$500 to \$1,500. This means that individual amounts of less than \$1,500 need not be counted when calculating whether the \$1,500 sum has been reached.
- 5.17 The Liberal Party proposes an increase in the minimum amount of receipts requiring disclosure to \$10,000 arguing that as the budgets of political parties are in the millions, such an amount would represent a more realistic and contemporary threshold for disclosure of donations.<sup>10</sup>

- 5.18 The AEC points out in response that the proposed lifting of the disclosure threshold has the potential to allow substantial donations to political parties to go undisclosed. For example, under the Liberal Party proposal, a party that has separate state branches could receive close to \$90,000 per annum from a single donor without the donation being disclosed. For this reason, the AEC does not support raising the disclosure threshold for receipts to \$10,000.<sup>11</sup>
- 5.19 The Committee notes that the proposed amendment to increase the disclosable sum received from a person or organisation during a financial year from \$1,500 to \$5,000 was removed during the passage of the *Electoral and Referendum Amendment Act (No.1) 1999*. As the minimum disclosure threshold for counting individual amounts received by donors to political parties has recently been increased from \$500 to \$1,500, the Committee believes it is appropriate to also increase the disclosable sum received from a person or organisation during a financial year from \$1,500 to \$3,000. The majority of the Committee also believes it is illogical for the minimum disclosable sum of donations to be the same as the minimum for individual amounts received, therefore the disclosable sum of donations should be doubled.

---

#### **Recommendation 44**

- 5.20 **That the disclosable sum received from a person or organisation during a financial year be increased from \$1,500 to \$3,000.**

##### **Disclosure by donors**

- 5.21 The Liberal Party believes the requirement for a donor to lodge returns is unnecessary as it merely duplicates the disclosure already made by a political party.<sup>12</sup>
- 5.22 The AEC points out that removing the requirement for a donor to lodge a disclosure return would effectively introduce a loophole which this requirement is intended to prevent.

... Parties are currently not required to aggregate transactions of less than \$500 when determining whether an individual has reached the \$1,500 threshold (at which point the details of that person must be disclosed). Without a separate donor return it would be open to a donor to donate any amount to a party

---

11 Submissions pp S1186-S1187 (AEC)

12 Submissions p S775 (Liberal Party)



without it being disclosed as long as that donation was made in lots of less than \$500.<sup>13</sup>

- 5.23 The Committee believes that disclosures by donors to political parties must be retained to preserve the integrity of the current disclosure system, particularly given the existence of a threshold, below which amounts received by political parties do not have to be aggregated for disclosure purposes. The Committee notes that the *Electoral and Referendum Amendment Act (No.1) 1999* has recently increased this threshold to \$1,500.
- 5.24 The Committee recommends, however, that the minimum donation before a donor is required to lodge a return be increased from \$1,500 to \$3,000. The Committee notes that an amendment to increase the minimum donation required for a return from a donor to \$10,000 was recently removed during the passage of the *Electoral and Referendum Amendment Act (No.1) 1999*, but believes that \$3,000 as a minimum donation is a more reasonable figure to require a donor to lodge a return. This proposal would have the advantage of minimising duplication and easing the burden on smaller donors, while still ensuring the disclosure of all donations above \$1,500 through party disclosure returns.

#### **Recommendation 45**

- 5.25 **That the minimum donation before a donor is required to lodge a return be increased from \$1,500 to \$3,000.**
- 5.26 The Liberal Party has also made the suggestion that if the requirement for donors to make a disclosure return is retained then the time frame for reporting the donation should be equal to that applying for the lodgement by registered political parties of their annual financial returns – 20 weeks after the end of the financial year.<sup>14</sup> The AEC points out in response that in fact, donors already have 20 weeks in which to lodge their returns, whereas political parties currently have 16 weeks.<sup>15</sup> This extra four weeks allows the AEC to advise any donors who have been identified from party returns of the need to lodge a return.

13 Submissions p S1187 (AEC)

14 Submissions p S775 (Liberal Party)

15 Submissions p S1187 (AEC)

### Electronic lodgement of returns

5.27 The ALP recommends the introduction of electronic lodgment of returns.

Certainly electronic lodgement of our returns would make life a lot easier for the Electoral Commission and a lot easier for those people who choose to analyse our returns...<sup>16</sup>

5.28 The AEC supports this idea, so long as the option to lodge the returns by traditional methods is retained, as it would offer significant advantages including facilitating the release of disclosure information onto the internet. The AEC, while admitting that no feasibility study has been done, believes that a standard package could be developed that could interface with commercial software, which the AEC could then provide to political parties and others.<sup>17</sup>

5.29 The Committee believes that the introduction of electronic lodgement of returns could facilitate the process of disclosure and recommends that the AEC conduct a feasibility study into such a proposal.

---

### Recommendation 46

**5.30 That the AEC conduct a feasibility study on moving to a system of electronic lodgement of annual disclosure returns.**

#### Disclosure compliance

5.31 The Liberal Party believes that because political parties rely heavily on volunteers, there is a strong likelihood of honest errors being made. They, therefore, recommend that s315, dealing with offences for failing to comply with the requirements of the disclosure legislation, should be amended to recognise substantial compliance.<sup>18</sup>

The concept of substantial compliance is widely recognised in other fields and should be the basis for the application of penalties under the Electoral Act.<sup>19</sup>

5.32 The Committee, while seeing no reason to significantly relax the penalty provisions, believes that s315(2) of the Electoral Act could be amended to allow for substantial compliance. Technical or minor mistakes should not be caught up in this penalty.

---

16 Transcript p 21 (ALP)

17 Submissions p S1192 (AEC)

18 Submissions p S776 and Transcript p 173 (Liberal Party)

19 Submissions p S776 (Liberal Party)

**Recommendation 47**

- 5.33 **That the AEC ensure that technical or minor mistakes are not brought within the provision of s315(2) of the *Commonwealth Electoral Act 1918*.**

**Annual returns by Commonwealth departments**

- 5.34 Section 311A of the Electoral Act currently requires all government agencies to submit with their annual report, information detailing how much was expended during the financial year on advertising, market research, polling, direct mail, and media advertising. This provision was incorporated into the Electoral Act as a result of amendments made to the *Political Broadcasts and Political Disclosures Act 1991* during its transit through the Senate. The AEC states that it has no role in administering this provision, and recommends it would be better placed in the *Public Service Act 1999*.<sup>20</sup>
- 5.35 Section 63 of the *Public Service Act 1999*, the section relating to the production of annual reports, indicates that annual reports from departments must be prepared in accordance with the guidelines approved on behalf of the parliament by the Joint Committee of Public Accounts and Audit (JCPAA). The Committee believes the requirements contained in s311A of the Electoral Act would be more appropriately contained in the JCPAA guidelines. Section 311A of the Electoral Act also applies to parliamentary departments, which are now covered by the *Parliamentary Service Act 1999*. Parliamentary departments are required to use the same JCPAA guidelines for the preparation of annual reports as departments covered by the *Public Service Act 1999*, so an amendment to the guidelines will also apply to the parliamentary departments.

**Recommendation 48**

- 5.36 **That section 311A of the *Commonwealth Electoral Act 1918*, concerning annual returns by Commonwealth departments, be deleted and inserted in the Joint Committee of Public Accounts and Audit guidelines for the production of annual reports.**

## Disclosure concerns

### Greenfields Foundation

- 5.37 The ALP has raised concerns about the use of the Greenfields Foundation by the Liberal Party as a means of avoiding disclosure under the Electoral Act.<sup>21</sup> While the ALP concedes that the money the Liberal Party is paying to the Greenfields Foundation as repayment of the loan is fully disclosed, it believes that the Greenfields Foundation nevertheless breaches the Act.<sup>22</sup>
- 5.38 The recently passed *Electoral and Referendum Amendment Act (No.1) 1999* contains an amendment to prevent a political party from receiving a loan of \$1,500 or more from a person or entity other than a financial institution unless the terms and conditions of the loan are disclosed, as well as the name of the organisation or association and the names and addresses of the members of the executive committee.

### Failure to disclose associated entities

- 5.39 The Electoral Act defines an associated entity as an entity controlled by one or more registered political parties or an entity operated wholly or to a significant extent for the benefit of one or more registered political parties.<sup>23</sup>
- 5.40 The Liberal Party alleges that a number of companies, all of which are associated entities of the Queensland ALP, failed to lodge returns with the AEC.<sup>24</sup> The six companies in question are: Labor Resources Pty Ltd, Labor Holdings Pty Ltd, Labor Enterprises Pty Ltd, New Labor Pty Ltd, Labor Legacies Pty Ltd, and Texberg Pty Ltd. The Liberal Party points out that these companies share the same address and a number of common directors, all of whom are office holders in the ALP Queensland Branch or the labor movement. It is asserted by the Liberal Party that only two of these companies associated with the Queensland Branch of the ALP have lodged annual disclosure returns as 'associated entities', while the other four have failed to do so.<sup>25</sup>
- 5.41 The AEC, however, has stated in evidence to the Committee that:
- ... in the view of the AEC, there has been no failure of disclosure by those four companies.

---

21 Submissions p S785 (ALP)

22 Transcript p 28 (ALP)

23 *Commonwealth Electoral Act 1918*, s287.

24 Submissions p S1558 and Transcript pp 174-175 (Liberal Party)

25 Submissions p S1559 (Liberal Party)

While ... these companies had not themselves lodged disclosure returns, their transactions had been fully incorporated into the disclosure returns lodged by another company of which they are all subsidiaries. Consolidated disclosure in this form is in accordance with section 287(6) of the Electoral Act, which deems related bodies corporate to be the one entity for disclosure purposes.<sup>26</sup>

### Imposition of a more comprehensive system of disclosure

5.42 The Australian Democrats, rather than advocating further streamlining of disclosure requirements, are concerned that there is inadequate transparency of the funding of parties and therefore believe that a more comprehensive regulatory system is required. Tightening the provisions and requiring the publication of explicit details of the true sources of donations to parties will help prevent, or at least discourage, corrupt, illegal or improper conduct in the formulation or execution of public policy.<sup>27</sup> To do this, the Democrats recommend that any donation over \$10,000 should be disclosed to the AEC shortly after it is made so that it can be made public quickly rather than awaiting disclosure in an annual return.<sup>28</sup> They also recommend tightening the disclosure provisions for trusts and clubs, which they view as screening devices for hiding the true source of donations.<sup>29</sup> Mr Ken Lawson and Mr Peter Cork are also in favour of such measures.<sup>30</sup>

### Tax deductibility of donations

- 5.43 Section 30-15 of the Commonwealth *Income Tax Assessment Act 1997* has been amended so that donations to a political party of up to \$100 annually be tax deductible, whether from an individual or a corporation.
- 5.44 The Liberal Party believes the maximum tax-deductible contribution should be increased to \$10,000. They argue that support for the democratic process through contributions to political parties is a worthy objective which should be encouraged. More realistic tax deductibility provisions would increase the number of Australians who are stakeholders in the democratic process through their support for the ongoing activities of political parties.<sup>31</sup>

---

26 Submissions p S1709 (AEC)

27 Submissions p S1614 (Australian Democrats)

28 Submissions p S1615 (Australian Democrats)

29 Submissions p S1615 (Australian Democrats)

30 Submissions pp S1093 (P.Cork) and S1350 (K.Lawson)

31 Submissions p S776 (Liberal Party)

- 5.45 The Committee does not believe a further increase to the maximum tax-deductible contribution is necessary at this time.

### **Tax deductibility of donations to independent candidates**

- 5.46 Mr Peter Andren points out that donations to independent candidates do not receive tax deductibility status in the same way that donations to political parties do, putting independent candidates at a significant disadvantage.<sup>32</sup>
- 5.47 The issue of tax deductibility for donations to independent candidates was dealt with at recommendation 62 of the 1996 federal election inquiry report, and the *Taxation Laws Amendment (Political Donations) Bill 1999*, currently before the parliament, addresses the anomaly raised by Mr Andren.<sup>33</sup>
- 5.48 However, another issue in relation to independent candidates and tax is that an independent candidate is able to claim their election expenses as tax deductions, but if they attract enough support during an election, they are also eligible for public funding which is not taxed as assessable income. If the electoral funding received by a candidate exceeds the deductible election expenses they incurred, the excess is not assessable income.<sup>34</sup>

### **Registration of political parties**

- 5.49 To be eligible for federal registration, political parties must have either 500 members or at least one member who is a member of a state, territory or the federal parliament.
- 5.50 There is considerable concern that the requirements in place for a group to register as a political party are not stringent enough and may leave the system open to abuse. The Australian Democrats draw attention to the recent NSW state election as evidence that clearer and more stringent requirements need to be put in place in order for a group to register as a political party:

The abundance of groups on the Upper House ballot paper who clearly could not meaningfully be called legitimate political parties risks bringing the democratic electoral process into disrepute.<sup>35</sup>

---

32 Submissions p S83 (P.Andren MP, Member for Calare)

33 Submissions p S1133 (AEC)

34 Submissions p S2412 (ATO) and Transcript p 24 (Hon A.Somyly MP, Member for Fairfax)

35 Submissions p S1611 (Australian Democrats)

- 5.51 The AEC is confident that the more stringent requirements attached to party registration at the federal level, the higher quotas needed for election, and the current review of the continued eligibility of registered parties, provides strong safeguards against the fraudulent registration of political parties and has been a factor in preventing the considerable mushrooming of numbers of political parties that has taken place at the state level. The AEC nevertheless believes that the party registration process could be strengthened further to safeguard the integrity of the system.<sup>36</sup>
- 5.52 The Committee believes that to strengthen the party registration process effectively, a number of changes need to be put in place. Several recommendations to achieve this are outlined below.

### Eligibility for registration

- 5.53 The AEC suggests that the Electoral Act should clarify party membership status for the purposes of party registration, particularly as members are crucial to the registration of a political party as well as having the power to deregister their party. In addition to the current provision requiring persons to be eligible for enrolment for federal elections in order to be recognised for party registration purposes, the AEC recommends further requirements for the definition of party membership for the purposes of registration. These include, that a person must be accepted as a member of the party by the parties own rules, have joined the party or renewed their membership within the previous 12 months and paid a minimum annual membership fee of \$5.<sup>37</sup>
- 5.54 The Committee recommends changing the requirements for federal registration to only allow registration by political parties which have at least one member who is a member of the federal parliament (as opposed to the current federal, State or Territory member of parliament) or 500 members (all of who meet the definitional requirements of membership of a political party under s123(3) of the Electoral Act).
- 5.55 The Committee also recommends that the definition of a member of a political party be expanded.

---

36 Submissions p S1205 (AEC)

37 Submissions pp S1206–S1207 (AEC)

**Recommendation 49**

- 5.56 **That eligibility for federal registration by a political party requires that political parties must have either 500 members as defined under section 123(3) of the *Commonwealth Electoral Act 1918* or have at least one member who is a member of the federal parliament.**

**Recommendation 50**

- 5.57 **That the definition of a member of a political party at section 123(3) of the *Commonwealth Electoral Act 1918* be expanded to include the requirements that a person must:**
- **have been formally accepted as a member according to the party's rules;**
  - **remain a valid member under party rules;**
  - **not be a member of more than one registered political party unless the parties themselves have sanctioned it; and**
  - **have paid an annual membership fee.**

**Party constitutions**

- 5.58 The AEC notes that most political party constitutions are scant, and inadequately address the internal functioning of membership-based organisations.<sup>38</sup> For example, the definition of what constitutes a member and the terms and conditions of membership are entirely set by the individual parties and are rarely specified.
- 5.59 Many suggestions have been made for registration of political parties to be dependent on tighter regulation of the structures and internal activities of political parties. Mr Jack Jones suggests registration of parties be limited to those parties which have more than one policy, are organised in more than one state, and that have had regular meetings for more than 2 years.<sup>39</sup> The Australian Democrats recommend standard items be required in a political party's constitution and that party constitutions be approved by the AEC as a condition of registration.<sup>40</sup>

---

38 Submissions p S426 (AEC)

39 Submissions p S155 (J.Jones)

40 Submissions p S1613 (Australian Democrats)



- 5.60 The AEC, however, believes that as the Electoral Act allows for parties to be regulated by their own constitutions and rules, it would be inappropriate for it to attempt to impose its interpretation of what is a democratic structure on a political party. Nor does it believe it should have the power to impose itself upon the internal operations of political parties.<sup>41</sup>
- 5.61 Section 126 (2)(f) of the Electoral Act currently requires a political party to lodge its constitution with the AEC as part of the registration process. The Committee endorses this approach.

## Registration fee

- 5.62 The AEC has suggested introducing a fee of \$500 for the registration of political parties to cover some of the costs of party registration services including advertising costs.

The Electoral Act requires such applications to be advertised in at least one major newspaper in each State and Territory, as well as the Commonwealth Gazette. These advertising costs alone exceed \$5,000.<sup>42</sup>

- 5.63 The AEC argues that such a nominal fee, representing \$1 for every member on the registration form, should not be onerous for an established political party and may have the advantage of discouraging frivolous applicants.<sup>43</sup>
- 5.64 The Committee supports the introduction of a registration fee but believes it should be in line with the real costs incurred by the AEC in completing the registration of political parties, including the advertising costs. A more realistic cost is \$5,000.

## Recommendation 51

- 5.65 That a fee of \$5000 be required to accompany an application for the registration of a political party and \$500 for an application to change either the registered name or abbreviation of a political party.**

---

41 Submissions pp S426-427 (AEC)

42 Submissions p S1206 (AEC)

43 Submissions p S1206 and Transcript p 52 (AEC)

## Party names

- 5.66 Mr Salter expressed concern about the registration of a party called The Unity Party - The Answer To Hanson [Unity – Say No To Hanson]. He considers the registration of this name a slur on Australian fairness as the party name denigrates a person whose name appears in another party.<sup>44</sup>
- 5.67 Concern has also been expressed by the Australian Democrats over the potential confusion caused to voters by the registered names of some political parties, some of which are misleading or misrepresenting of the party's policies and nature. The Democrats suggest broadening the criteria for objections to party names as a way of reducing the possibility of inappropriate and unrepresentative party names being registered.<sup>45</sup>
- 5.68 The Committee agrees that there is a need to tighten the criteria for the registration of party names.

### **Recommendation 52**

- 5.69 **That the AEC investigate and report on the effectiveness of the current criteria for the registration of party names and how the AEC might improve the criteria for the registration of party names to disallow inappropriate and unrepresentative names being registered.**
- 5.70 Concern has also been expressed in regard to a party's abbreviated name. A party is allowed to register both a name and an abbreviation. Under the present provisions the abbreviation a party registers may be an alternative to, and even be longer than, the registered party name. In effect, a party can register two quite unrelated names. The AEC recommends that the alternative registered name be restricted to an abbreviation of, or at least bear a meaningful connection to the registered party name. Such an abbreviation should also be no longer than the registered party name.<sup>46</sup>
- 5.71 The Committee supports this proposal.

---

44 Submissions p S1553 (F.Salter)

45 Submissions p S1611 (Australian Democrats)

46 Submissions p S1208 (AEC)

### Recommendation 53

- 5.72 **That the registered abbreviation of a political party be restricted to either an acronym, or a shortened version, of the party's registered name and it should be no longer overall than the registered party name.**

### Front parties

- 5.73 Senator Murray commented that:

...there is a belief in the political world that independents and political parties are put up by another political party or organisation for tactical purposes during an election, to influence preference distribution or to disperse the vote or to confuse voters...<sup>47</sup>

- 5.74 The Committee also received submissions which expressed concern that some minor parties are no more than 'fronts' for larger political parties seeking to maximise their second preference vote.<sup>48</sup>

- 5.75 The AEC points out that the federal party registration scheme has not experienced the problem of front parties to date. The AEC suggests that this is probably due to the high quota for election in the Senate and the stringent requirements attached to party registration at the federal level. The Committee considers that the current requirements, enhanced by the implementation of the recommendations made in this report in relation to party registration are sufficient to prevent the federal party registration system being exploited by front parties.<sup>49</sup>

### AEC review of registered parties

- 5.76 The AEC is currently undertaking a review to ensure that only political parties that continue to be eligible for federal registration under the current requirements are allowed to remain registered. Under review are all parties registered before 1997 that do not have a sitting member in a federal, state or territory parliament, those parties that lost sitting members of parliament at the 1998 federal election, along with parties which were registered on the basis of having a state member of parliament where the parliamentary list records that person as belonging to a differently named party.

---

47 Transcript pp 51-54 (Senator Murray)

48 Submissions pp S1094 (P.Cork), S1344 (K.Lawson) and S1472 (N.Jameison)

49 Submissions p S1207 (AEC)

- 5.77 As part of this review, parties are required to supply a current copy of their constitution and evidence that they have either 500 members entitled to vote at federal elections or a sitting member of a federal, state or territory parliament. The standard of documentation and the verification undertaken by the AEC is the same as if the party were first applying to register. In instances where parties fail to provide the requested documentation or the AEC is unable to verify a party's ongoing entitlement to registration, the AEC will initiate deregistration action.<sup>50</sup>
- 5.78 The AEC believes a review such as this is vital to the integrity of the register of political parties and, as such, the AEC should be expressly authorised to undertake such reviews under the Act. This review power should entitle the AEC to specify the documentary evidence it requires political parties to produce in the course of the review. Failure to produce the required evidence should be a sufficient basis for the party to be deregistered.<sup>51</sup>
- 5.79 The Committee does not oppose giving the AEC authorisation to conduct such reviews. Further reviews will be especially important to incorporate the new requirements made as a result of this inquiry. The Committee believes it would be productive if such a review was conducted after every federal election.

---

#### **Recommendation 54**

- 5.80 **That the AEC be authorised to conduct reviews of the continuing eligibility of registered political parties after every federal election. The AEC should be able to require parties to produce documentation in support of their application for registration and their continued right to remain registered. The standard of documentation and the verification undertaken by the AEC can be the same as if the party were first applying to register. The AEC should also have the power to deregister a political party if it fails to produce the documentation requested by the AEC in support of its continuing right to remain registered.**

---

50 Submissions p S426 (AEC)

51 Submissions p S1205 (AEC)

## Section 44 of the Constitution

- 5.81 Section 44 of the Australian Constitution sets out disqualifications which prevent a person from being chosen or of sitting as a senator or a member of the House of Representatives.
- 5.82 A candidate nominating for a federal election is responsible for ensuring that they qualify under the provisions of s44 of the Constitution. The candidate is required to make a declaration on the nomination form that he or she is not disqualified by s44, the full text of which is printed on the form.
- 5.83 There have been some suggestions made that the AEC should take more responsibility and provide more guidance to ensure nominating candidates qualify under s44. The ALP, in particular, does not believe:
- ...it reasonable or appropriate to expect candidates or prospective candidates, in doubt about whether a position or activity in which they are engaged or occupied falls foul of section 44, to go to the considerable expense of obtaining advice from a constitutional lawyer.<sup>52</sup>
- The ALP recommends the government and the AEC cooperate in organising guidelines for the assistance of candidates in the future.<sup>53</sup>
- 5.84 The AEC disagrees, arguing that in accepting the nomination, a Divisional Returning Officer (DRO) is required only to check that the nomination has been properly made; that is, that all questions have been answered, that the nominees if any are enrolled, and that the form is signed and dated.
- It is not the role of the AEC to provide legal advice to intending candidates on the application of section 44 of the Constitution to their personal circumstances. Intending candidates needing legal advice must consult their own lawyers. This is a long standing position, and is based on the legal framework of the Electoral Act, on practical consideration relating to the nomination process, and on the conclusions of parliamentary committees that have inquired into this issue.<sup>54</sup>
- 5.85 The AEC has for many years, published clear warnings on constitutional disqualifications in the opening pages of the “Candidates Handbook” provided to all candidates. In addition to this, the AEC published an electoral backgrounder entitled ‘Candidate Disqualification: Section 44 of

---

52 Submissions pp S796-797 (ALP)

53 Submissions p S797 (ALP)

54 Submissions p S361 (AEC)

the Constitution' three months prior to the 1998 federal election. This provided a detailed discussion of the constitutional disqualifications for candidates at federal elections, reviewing relevant High Court cases, provided information on the resignation and reinstatement rights of public servants, including information on how British subjects could divest themselves of dual citizenship, and providing guidance for further research. This backgrounder was provided to all candidates and made available to the public in hard copy from all AEC offices and on the AEC internet site.<sup>55</sup>

### Sections 44(i) and 44(iv)

- 5.86 At recent elections the requirements of sections 44(i) relating to dual citizenship, and 44(iv) relating to office of profit under the crown, are the primary cause of constitutional disqualification and have caused considerable difficulty for many candidates.
- 5.87 The purpose of these subsections is to protect the parliamentary system by eliminating candidates whose performance might be affected by a conflict of loyalty. However, these particular subsections are widely considered to be no longer relevant in meeting this end. There has thus been an increase in the number of calls for a referendum to amend this part of the Constitution.<sup>56</sup> The AEC is one such advocate, asserting that "a national referendum is needed to amend the Constitution so that the difficulties that currently face intending candidates are properly and finally addressed."<sup>57</sup>
- 5.88 Section 44(i) states that any person who:
- ...is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power ... shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.
- 5.89 The Australian Democrats raise the point that in its current form, s44(i) of the Constitution is wholly unsuited to achieving its aim of allowing only Australians to sit in the Australian parliament. The Democrats argue that in view of the multicultural nature of Australian society, contemporary standards necessitate that Australian citizenship be the sole requirement for being chosen for parliament under s44(i).<sup>58</sup>

---

55 Submissions p S1941 (AEC)

56 Submissions pp S361 (AEC) and S796 (ALP)

57 Submissions p S1200 (AEC)

58 Submissions p S1620 (Australian Democrats)

- 5.90 The ALP and the Liberal Party also raise concerns with this provision. The ALP points out that there is no satisfactory definition of what are reasonable steps to renounce foreign citizenship in order not to be disqualified from standing for parliament. The ALP argues that the absence of appropriate guidelines or understanding of these particular constitutional requirements is a serious problem.<sup>59</sup> The Liberal Party proposes that the act of nomination by a candidate for the House of Representatives or Senate should be recognised as immediately extinguishing any allegiance to a foreign country.<sup>60</sup>
- 5.91 Section 44(iv) states that any person who:
- ...holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth ... shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.
- 5.92 The Committee has received strong opposition to this section of the Constitution from a variety of sources. The Australian Democrats argue that this provision is also out of date as the growth in the machinery of government has meant that in contemporary society the effect is to prevent thousands of citizens employed in the public sector from standing for election without real justification;<sup>61</sup> the ALP recommend an amendment to the Constitution to apply the office of profit exclusion from office from the start of a Member's or Senator's term of office rather than from the date of nomination;<sup>62</sup> the Liberal Party suggest a referendum on the issue;<sup>63</sup> Mr Neil Gillespie argues that elected officials, specifically ATSIIC counsellors, should not have to resign in order to contest an election;<sup>64</sup> and the Voters Against Legal Unfair Elections (VALUE) group believe that the discriminatory requirement for pensioners, soldiers, school teachers and other people who are not allowed to contest an election without foregoing their income should be removed.<sup>65</sup>
- 5.93 The House of Representatives Standing Committee on Legal and Constitutional Affairs report of July 1997 recommended that s44(iv) be deleted and replaced by provisions preventing judicial officers from nominating without resigning their posts and other provisions

---

59 Submissions p S797 (ALP)

60 Submissions p S774 (Liberal Party)

61 Submissions p S1621 (Australian Democrats)

62 Submissions p S796 (ALP)

63 Transcript p 177 (Liberal Party)

64 Submissions pp S265-266 (N.Gillespie)

65 Submissions pp S276, 278, 292,1835 (VALUE)

empowering parliament to specify other offices that would be declared vacant if the office holder is elected to parliament.<sup>66</sup>

5.94 The Committee recommends that, in relation to s44(i), the act of nomination by a candidate for the House of Representatives or Senate be recognised as immediately extinguishing any allegiance to a foreign country.

5.95 The Committee accepts that constitutional and legislative action is needed to overcome the problems associated with sections 44(i) and 44(iv) of the Constitution. The Committee supports the Government response to the House of Representatives Standing Committee on Legal and Constitutional Affairs report of July 1997 which stated:

...Given adequate support for a suitable proposal, the government would be disposed to put the constitutional issue to a referendum at an appropriate time.<sup>67</sup>

---

### **Recommendation 55**

5.96 **That given adequate public support, a referendum be held to amend the constitution so that the act of nomination by a candidate for the House of Representatives or Senate be recognised as immediately extinguishing any allegiance to a foreign country provided the candidate is also an Australian citizen.**

## **Election litigation**

5.97 Nine election petitions were filed with the High Court of Australia, within the 40 day period after the return of the writs for the 1998 federal election, under the provisions of Part XXII of the Electoral Act. All nine petitions have now been decided by the High Court sitting as the Court of Disputed Returns. The decision in two related petitions resulted in the disqualification of an elected Queensland Senate candidate on constitutional grounds. The seven other petitions were dismissed by the Court.<sup>68</sup>

---

66 Standing Committee on Legal and Constitutional Affairs 1997. *Aspects of Section 44 of the Australian Constitution – Subsections 44(i) and (iv)*, Canberra, AGPS, p 93.

67 *Government response to the Standing Committee on Legal and Constitutional Affairs report into Aspects of Section 44 of the Australian Constitution – Subsections 44(i) and (iv)*, p 3.

68 Submissions p S1919 (AEC)



## Heather Hill petitions

*(Sue v Hill, Sharples v Hill)*

- 5.98 A petition was filed with the Court of Disputed Returns on 1 December 1998 by Mr Henry Sue disputing the election of Senator Elect Heather Hill, of Pauline Hanson's One Nation Party, for the Queensland Senate at the 1998 federal election. On 2 December 1998, Mr Terry Sharples filed a similar petition also disputing the election of Ms Heather Hill for the Queensland Senate.
- 5.99 Both petitions challenged the election of Ms Hill on the grounds that, at the date of her nomination, Ms Hill was a subject or citizen of a foreign power, namely, the United Kingdom.
- 5.100 On 23 June 1999, the Court ruled that Ms Heather Hill was not capable of being elected as a Senator for Queensland under section 44(i) of the Constitution.<sup>69</sup> A full recount was ordered resulting in Mr Harris of the One Nation Party being elected in place of Ms Hill. All other candidates elected were unchanged from those elected at the original election.<sup>70</sup>

## McClure and related petitions

*(McClure v AEC, Polke v AEC, Vaughan v AEC, Garcia v AEC, Heathorn v AEC)*

- 5.101 A petition was filed on 8 December 1998 by Mr Malcolm McClure, an unsuccessful independent candidate for the Victorian Senate at the 1998 federal election, disputing the election of all Senators for the State of Victoria. Four other identical petitions were also filed in December 1998 by unsuccessful independent Senate candidates, disputing the half-Senate elections in their respective states and the Northern Territory. These petitioners were: Mr Jonathan Polke (Northern Territory); Mr Lauriston Heathorn (Tasmania); Mr Adrian Vaughan (New South Wales); and Mr Roderick Garcia (Western Australia).
- 5.102 All petitioners claim they have been disadvantaged by not being given media coverage and not having a right to a "ticket vote", significantly affecting the outcome of the election.
- 5.103 On 24 June 1999, the Court dismissed the petition by Mr McClure on the basis that, in regard to lack of media coverage,
- ... the freedom of communication implied in the Constitution is not an obligation to publicise ...it is not a right to require others to provide a means of communication.<sup>71</sup>

---

69 Submissions p S1931 (AEC)

70 Submissions p S1935 (AEC)

71 Submissions p S1952 (AEC)

In regard to group ticket voting, the Constitution

...gives no warrant for the Court declaring void an election conducted in accordance with valid legislative requirements.<sup>72</sup>

5.104 On 23 July 1999, the Court dismissed the four other identical petitions.<sup>73</sup>

## Ditchburn petitions

*(Ditchburn v AEO Qld, Ditchburn v DRO Herbert)*

5.105 A petition was filed on 3 October 1998 by Mr Donald Ditchburn, an elector for the Division of Herbert in Queensland, disputing the election of all Senators elected at the half-Senate election for the State of Queensland. A second petition was also filed by Mr Ditchburn on the same day, disputing the election of the Member for Herbert in Queensland.

5.106 Mr Ditchburn argues that aspects of the current voting system contravene the Constitution as members of parliament are not being directly chosen by the people. Mr Ditchburn asserts in his first petition that group ticket voting contravenes the Constitution as voting above the line amounts to electors choosing a party by means of a group voting ticket rather than directly electing Senators. In his second petition, Mr Ditchburn contends that the full preferential voting system used in the House of Representatives also contravenes the Constitution as members are indirectly chosen by electors whose votes were transferred from excluded candidates.

5.107 On 23 July 1999, the Court dismissed the two petitions on the grounds that Parliament's provision for a complex system of voting does not contravene any section of the Constitution, rather it only addresses the manner in which direct voting is conducted.<sup>74</sup>

## A further petition

*(Rudolphy v Lightfoot)*

5.108 On 11 May 1999, a further petition, *Rudolphy v Lightfoot* was filed with the Court, disputing the casual vacancy election of Senator Lightfoot in May 1997, on the basis of alleged anomalies in the Western Australian Parliament at the time.

---

72 Submissions p S1953 (AEC)

73 Submissions p S1955 (AEC)

74 Submissions pp S1961-S1962 (AEC)

- 5.109 This petition was dismissed on 10 November 1999 on the basis that the petition was not filed within the 40 day period after the return of the writs for the 1998 federal election.<sup>75</sup>

## Costs in election petitions

- 5.110 The AEC plays an advisory role in election petitions and normally seeks leave to join as a party in order to make submissions on the facts of the election under dispute.

In its *amicus* role in election petitions, the AEC does not seek costs against other parties and does not expect costs to be awarded against it...<sup>76</sup>

Indeed, no costs were ordered against the AEC in any of the petitions filed with the Court of Disputed Returns for the 1998 federal election.<sup>77</sup>

- 5.111 The AEC has reported that the Department of Finance and Administration has advised that under new financial arrangements, the AEC is responsible for the payment of Commonwealth costs in all electoral litigation.<sup>78</sup> In this context, the AEC has recommended that the Committee seek a reference to inquire into the powers and functions of the AEC and the powers and functions of the Court of Disputed Returns. The Committee is willing to consider that suggestion at a later time.

## Responsibilities in Electoral Litigation

- 5.112 The AEC recommends that the relevant sections of the Electoral Act be amended to allow injunction applications to be made to the Federal Court rather than the Supreme Court of a state or territory. The AEC believes that as the Electoral Act was written before the establishment of the Federal Court of Australia it would be more appropriate for injunction applications relating to federal elections to be decided by the Federal Court of Australia. A practical advantage of such a change would be that similar injunction applications could be heard simultaneously in the one court venue and that decisions are more likely to show greater consistency.<sup>79</sup> For similar reasons, the AEC also argues that the High

---

75 R.Campbell, 'Challenge against WA Senator rejected', *The Canberra Times*, 11 November 1999, p 4.

76 Submissions p S1923 (AEC)

77 Submissions p S1919 (AEC)

78 Submissions p S1943 (AEC)

79 Submissions p S435 (AEC)

Court, sitting as the Court of Disputed Returns, should remit a federal election petition to the Federal Court only.<sup>80</sup>

5.113 The Committee supports this recommendation.

### **Recommendation 56**

5.114 That in section 354 and 383 of the *Commonwealth Electoral Act 1918* and section 139 of the *Referendum (Machinery Provisions) Act 1984*, “Federal Court of Australia” be substituted for the “Supreme Court of the State or Territory.”

5.115 On a related issue, the AEC also recommends that s382 of the Electoral Act be deleted. Section 382 provides that:

The Electoral Commissioner shall, in every case where the Crown Law authorities so advise, institute legal proceedings against any person committing any offence against this Act.

5.116 The AEC argue that the establishment of the office of the Commonwealth Director of Public Prosecutions, with which the AEC routinely liaises on possible offences and prosecutions makes this provision unnecessary. The Committee accepts this recommendation.<sup>81</sup>

### **Recommendation 57**

5.117 That section 382 of the *Commonwealth Electoral Act 1918* be deleted.

## **Redistributions**

5.118 It has become obvious during this inquiry that there is considerable unawareness about the process of redistributions and the level of public consultation throughout the process.

5.119 A number of people voiced their concerns and questioned the reasons behind the abolition of the Division of Oxley in Queensland (formerly held by Ms Pauline Hanson), prior to the 1998 federal election.<sup>82</sup>

---

80 Submissions p S435 (AEC)

81 Submissions p S435 (AEC)

82 Submissions pp S174 (Pauline Hanson’s One Nation, Logan Branch), S205 (D.Carrington-Smith), S238 (D.McNaughton), S264 (C.Hewson), S568 (S.Jackson), S596 (B.Hudson), S606 (C.Bevan), S677 (A.Di Santo) and S708 (M.Sawers)

Ms Carrington-Smith, in her submission, sums up the scepticism that exists:

[It] seems an extraordinary coincidence that the new seat of Blair was created by a redistribution involving the seat of Oxley held by Pauline Hanson, this being the only new seat created at this election.<sup>83</sup>

- 5.120 The AEC strongly attests that this redistribution creating a new Division of Blair, was, like all other redistributions, conducted lawfully under detailed instructions contained in the Electoral Act.<sup>84</sup>
- 5.121 On 28 February 1997, the Electoral Commissioner determined that as a result of population changes between the states and territories, the representation entitlements of Queensland and the Australian Capital Territory in the House of Representatives would have to change. It was clear that Queensland would gain a new Division because of population increase in that state. On 28 July 1997, following an extensive public consultation process, the Redistribution Committee for Queensland published its findings. It proposed a new Division of Blair to the west of Brisbane. Maps of the new boundaries were published in the *Sunday Mail* on 27 July and the *Courier Mail* on 28 July 1997. Objections to the proposed redistribution were invited by 25 August 1997. Following the objections process some minor changes were made, and the final redistribution was determined.<sup>85</sup>
- 5.122 The Committee received submissions suggesting the redistribution of particular federal electoral boundaries.<sup>86</sup> Determinations of State and Territory representation in the House of Representatives occur approximately one year after the commencement of each new Parliament.<sup>87</sup> In 1999, redistributions took place in New South Wales, South Australia and Tasmania, resulting in changes to the boundaries of Divisions in these States.<sup>88</sup> Redistribution Committees in the Northern Territory and Western Australia have also announced their proposals, with the proposal for the Northern Territory involving the creation of two

---

83 Submissions p S205 (D.Carrington-Smith)

84 Submissions p S1144 (AEC)

85 Submissions p S1144 (AEC)

86 Submissions pp S186 (M.Gray) and S1333 (Liberal Party Kalgoorlie North Division)

87 Submissions p S358 (AEC)

88 Australian Electoral Commission. 2000. *Electoral Newsfile, No 89*. Canberra, AEC, 7p; Australian Electoral Commission. 2000. *Electoral Newsfile, No 90*. Canberra, AEC, 7p; and Australian Electoral Commission. 2000. *Electoral Newsfile, No 91* Canberra, AEC, 5p.

new Divisions from the current one, and the proposal for Western Australia involving the creation of a new Division.<sup>89</sup>

- 5.123 The Committee has recommended in Chapter 4 that the AEC conduct better targeted public education programs prior to the next federal election, specifically in relation to the full preferential system of voting. The Committee suggests that public unawareness of the redistribution process of electoral boundaries be another area targeted.

### **Recommendation 58**

- 5.124 **That as part of its public education program prior to the next federal election the AEC target as an education priority the process and outcomes of the redistribution of electoral boundaries in those electorates where a redistribution has occurred since the previous federal election.**

## **Four year terms**

- 5.125 A number of submissions were received calling for the introduction of four year parliamentary terms.<sup>90</sup> It is argued that the current system of three year or less parliamentary terms does not allow a political party the time to introduce changes and allow their effects to take hold. It results in the introduction of short-term policies that are detrimental to the wellbeing of the country.<sup>91</sup>

Parliamentary terms for both houses should be changed to four years to allow time for policy changes, implementation, assessment and review.<sup>92</sup>

- 5.126 A substantial number of submissions also advocated fixed terms:<sup>93</sup>

---

89 Australian Electoral Commission. 2000. *Electoral Newsfile, No 94*. Canberra, AEC, 6p; and Australian Electoral Commission. 2000. *Electoral Newsfile, No 92*. Canberra, AEC, 7p.

90 Submissions pp S94 (N.Peck), S97 (A.McMullin) and S1471 (N.Jameison) See also Transcript p 33 (ALP)

91 Submissions p S97 (A.McMullin)

92 Submissions p S1471 (N.Jameison)

93 Submissions pp S97 (A.McMullin), S223 (G.Wadsworth), S226 (Australian Democrats south Australian Division), S229 (R.Kowald), S236 (D.McNaughton) and S655 (Electoral Reform Society of South Australia)

I believe it is basically inequitable for the incumbent prime minister to be able to call an election at a time deemed advantageous for his political party.<sup>94</sup>

Set election dates would make:

...it easier for the Electoral Commission to perform its task smoothly and for the voters being able to vote with the minimum of disruption to their lives.<sup>95</sup>

Governments should remain in power for a fixed term with 1 to 2 months flexibility. Exceptions would be a double dissolution or as directed by the Governor General due to exceptional circumstances.<sup>96</sup>

- 5.127 The AEC has estimated what cost savings may arise as a result of moving to a fixed four year term for the House of Representatives. The conclusions are speculative only and are limited to data available since the establishment of the AEC in 1984. Since 1984 the AEC has been involved in six federal elections. During this fourteen-year period, federal elections have taken place on average every 2.3 years. If a fixed four year term had been applied during this time there would have been only 4 federal elections, with the next federal election scheduled for December 2000. Some \$398,464,000 has been expended on the conduct of six federal elections since 1984. By contrast the lesser amount of \$243,295,000 would have been expended during the same period with fixed four year terms. This translates into a reduction of some \$155,169,000 in government outlays over the 1984 to 1998 period.<sup>97</sup>
- 5.128 The Committee reiterates the previous JSCEM's unanimously supported proposal to amend the Constitution to provide for four year parliamentary terms for the House of Representatives so as to facilitate better long-term planning by government and ensure consistency with state jurisdictions and cost savings.<sup>98</sup>

---

94 Submissions p S97 (A.McMullin)

95 Submissions p S226 (Australian Democrats South Australian Division)

96 Submissions p S229 (R.Kowald)

97 Submissions p S1202 (AEC)

98 Joint Standing Committee on Electoral Matters. 1997. *The Federal Election: Report of the Inquiry into the conduct of the 1996 Federal Election and matters related thereto*. Canberra, AGPS, p 114.

## Recommendation 59

- 5.129 **To amend section 28 of the Constitution to increase the House of Representatives term from three years to four years.**

## ANAO audit of the AEC

- 5.130 In late 1997 to mid 1998 the Australian National Audit Office (ANAO) undertook a performance audit of the AEC.<sup>99</sup> The audit examined the corporate governance framework of the AEC, primarily the planning processes, performance information and the efficiency and administrative effectiveness of management procedures and practices. The audit also incorporated the use of activity based costing and benchmarking methodologies to examine certain areas of the AEC to identify opportunities for achieving cost savings or efficiencies.
- 5.131 The ANAO found that the AEC generally had a sound corporate governance framework in place. As well, the AEC had established a sound basis for planning, risk management and performance monitoring. There were some areas, such as the AEC's performance assessment framework and the AEC's control structures, which the ANAO identified as needing improvement to facilitate a more cost effective corporate governance framework.
- 5.132 The ANAO Audit Report made 15 recommendations aimed at improving the AEC's corporate governance framework. These related to:
- The need for the AEC to use an overall business oriented approach to determine the extent to which the AEC should be involved in new work under the expanded s7A of the Electoral Act;
  - The need to improve the AEC's performance assessment framework by activities such as ensuring direct links between goals and performance indicators as the hierarchy of plans are completed;
  - Improving the AEC's control structures by, for example, explicitly linking financial planning to the Commission's operational plan etc; and
  - Achieving possible administrative savings in areas such as corporate management by the use of an activity-based costing methodology to compare the AEC's accounts payable and pay and condition functions

99 Australian National Audit Office, Performance Audit Report No.1 1998-99. *Corporate Governance Framework, Australian Electoral Commission*. Canberra, ANAO, 136p.



with established benchmarks. Overall the ANAO estimated that the AEC could achieve annual savings of approximately six-full time equivalent staff or \$260,000 in salary and allowances.

5.133 The AEC accepted all these recommendations.

## Process of election review

5.134 The AEC entered the 1998 federal election with amending legislation having only passed through parliament the month before. While implementing these changes was not difficult because the majority were technical in nature, the AEC is concerned about the difficulty of implementing a reform bill if passed by the parliament immediately prior to a future election. Such an occurrence would be profoundly disruptive from an organisational perspective.<sup>100</sup>

...if we are going to make changes, I hope that we will be able to make them in a timely fashion such that we can ensure that those processes are given full effect by our people at the next election.<sup>101</sup>

5.135 The AEC is keen that steps be taken to ensure that there is at all times, and in relation to all issues, an appropriate mechanism which will enable the AEC to perform its statutory function of providing information and advice to the parliament. This is particularly so on matters that might require a cooperative political approach not immediately relating to the conduct of the last election.<sup>102</sup> The AEC therefore recommends that the resolution of appointment of the JSCEM be broadened to allow it to inquire into and report on such matters as may be referred to it by the AEC, as well as the parliament and Minister.<sup>103</sup>

5.136 The Committee does not support the AEC's suggestion as the JSCEM is a committee of the parliament and therefore its inquiries should be referred to it by the parliament or the Minister.

5.137 There was some concern expressed about a lack of publicity about the 1998 federal election inquiry.

Why is there never any mention in Federal Parliament that this inquiry is to be held? Those interested in making submissions are left to rely on newspaper advertising ... or word of mouth. ... A mailing list needs to be developed to include all candidates at the

---

100 Submissions p S330 (AEC)

101 Transcript p 50 (AEC)

102 Submissions p S1208 (AEC)

103 Submissions p S1209 (AEC)

election, and those who have made submissions to previous inquiries etc.<sup>104</sup>

As is so often the case with government inquiries, the very fact that there is Committee investigating voting and electoral matters, and that the public may submit to this inquiry, is almost totally unknown to the general public. ... I ask that ...the Committee itself apply itself to government to ensure that all future committees and inquiries are well advertised...<sup>105</sup>

5.138 The Committee reassures these submitters that every effort is made to ensure that inquiries such as this are effectively publicised. New initiatives to better promote parliamentary committees have recently been introduced. These include:

- monthly advertisements in the *Australian* promoting committee hearings;
- a new publication 'About the House', with the latest information about committee inquiries and hearings;
- the conduct of a House of Representatives seminar series on committees;
- use of the internet site to regularly update the progress of inquiries and times of public hearings;
- more direct contact with the media to publicise the work of the committees; and
- a new form of advertisement to advertise inquiries which is more eye-catching.

5.139 Many of these strategies were used throughout this inquiry to maximise public awareness of the inquiry. See Chapter 1 for more details.

5.140 The Committee emphasises the need to continue to have inquiries into federal elections and continually update the Electoral Act so it stays at the international forefront.

Gary Nairn MP,  
Chairman  
20 June 2000

---

104 Submissions p S659 (The Electoral Reform Society of South Australia)

105 Submissions p S1090 (P.Cork)



## **Minority Report**—Senator the Hon John Faulkner, Mr Michael Danby MP & Mr Laurie Ferguson MP (ALP)

In this Minority Report, Opposition members of the Joint Standing Committee on Electoral Matters (JSCEM) identify nine recommendations of the Committee, in its *Report of the Inquiry into the Conduct of the 1998 Federal Election and Matters Related Thereto*, that the Opposition does not support.

The majority report also contains argumentation not supported by the Opposition. Constraints placed upon JSCEM members in relation to the timing of the tabling of the Committee's report have limited this minority report to addressing only those majority recommendations that, in our view, clearly compromise the effectiveness, fairness and integrity of the *Commonwealth Electoral Act (1918)*.

### **Recommendation 3**

That section 155 of the *Commonwealth Electoral Act 1918* be amended to provide that for new enrolments, the rolls for an election close on the day the writ is issued, and for existing electors updating address details, the rolls for an election close at 6.00pm on the third day after the issue of the writ.

Opposition Committee members oppose this Recommendation.

The Government has previously proposed similar provisions to those contained in Recommendation 3. They were rejected by the Senate. The Senate was concerned with the potential for disenfranchising thousands of voters at each election by early closure of the rolls. Opposition Committee members' concerns have not been allayed on this issue.

Closing the rolls as soon as an election is called will potentially disenfranchise about 80,000 new enrollees at each election, mostly young Australians and new Australian citizens. Further, evidence given by the Australian Electoral

Commission to the Committee shows that a majority of the 320,000 people who notified a change of address did so at the last available opportunity. The restriction on enrolment recommended by the Committee would massively distort the electoral rolls, leading to a totally unacceptable situation where more than 200,000 voters were enrolled at a non-current address.

## **Recommendation 11**

Subject to the JSCEM acceptance of matters raised in the AEC's internet issue paper, that the publicly available Commonwealth Electoral Roll be provided on the AEC internet site for name and address/locality search purposes, and that the Roll be provided in CD-Rom format with the same search facility to public libraries without internet access. Both the internet and CD-Rom Roll should be updated monthly subject to search capacity being limited to individual names and addresses on the Roll.

The AEC recently reported to a Senate Estimates hearing that it was reviewing the operation of Part VI of the Commonwealth Electoral Act (Sections 81 - 92). These Sections govern the production, distribution and use of the Electoral Roll.

The recent controversy surrounding the illegal release of electoral roll information by the AEC to the Tax Office and the proposed illegal use of that information by the Tax Office to mail out a Prime Ministerial letter and accompanying GST propaganda is of great concern to Opposition Committee members.

We believe that Recommendation 11 should be deferred until the AEC reports on Part VI of the Act and the issues arising from the recent illegal release of electoral roll information. The Opposition will be closely examining privacy implications arising from the AEC internet issue paper.

## **Recommendation 17**

That s331 of the *Commonwealth Electoral Act 1918* and s124 of the *Referendum (Machinery Provisions) Act 1984* be amended to reflect that only electoral advertising in journals needs to be labelled as advertising.

Opposition Committee members oppose this Recommendation.

Opposition Committee members oppose any weakening in the accountability for, and transparency of election advertising material.

---

## Recommendation 27

That paragraph 7 of Schedule 3 of the *Commonwealth Electoral Act 1918* and paragraph 7 of Schedule 4 of the *Referendum (Machinery Provisions) Act 1984* concerning the postmarking of postal vote envelopes be amended, so that the date of the witness's signature is instead used to determine if a postal vote was cast before the close of polling if there is no post mark or if the post mark is illegible. The witnessing portion of the postal vote envelope should specify all the elector's details being attested to, and should make clear that it is an offence for a witness to make a false declaration.

Opposition Committee members oppose this Recommendation.

Opposition Committee members believe that a post mark is a reliable and neutral reference for determining the time at which a postal vote was cast.

Opposition Committee members are concerned that allowing other means for determining the date a postal vote was cast may open the postal voting system to manipulation.

## Recommendation 36

That the *Commonwealth Electoral Act 1918* be amended to explicitly prevent scrutineers from providing assisted votes.

Opposition Committee members oppose this Recommendation.

Currently, the Electoral Act provides that in the case of an elector's sight being impaired, or if they are incapacitated or illiterate, that elector can appoint a person to assist them to vote. Currently, the elector decides who will assist them. This is a very practical way of handling assisted voting – it is fair, and it preserves the secrecy of an individual's vote. It does not compromise an elector's rights, nor does it in any way compromise the proper functioning of polling booths or the integrity of the electoral process.

The Australian Electoral Commission's submission stated:

The AEC is of the view that the current federal legislation relating to assisted voting is operating properly, as the parliament intended, and should be left unamended.

Opposition Committee members agree with the AEC's assessment.

The *Commonwealth Electoral Act* allows an individual elector the say about who is to assist them. Appropriately, the elector is free to choose someone that they trust. Opposition Committee members believe that individual electors should not be limited in choosing who may assist them to cast a formal vote.

Many of the polling places where assisted voting occurs are in small, relatively isolated communities where presiding officers or polling officials in the booth are known to electors. The advantage of a 'voter's friend' is that an elector has someone *they* nominate and *they* are comfortable with assisting them to vote. If an elector wants a scrutineer to assist them to vote formally, then Opposition Committee members believe such a request is certainly no impediment to the democratic process.

## **Recommendation 38**

That the nexus between provisional voting and reinstatement be broken by deleting ss 105(4) and 105(5) of the *Commonwealth Electoral Act 1918*.

Opposition Committee members oppose this Recommendation as we are concerned that this measure may lead to disenfranchisement. We support the principle set out in Paragraph 3.81 of the Report, and are not convinced that the above Recommendation will have no effect on the franchise.

## **Recommendation 44**

That the disclosable sum received from a person or organisation during a financial year be increased from \$1,500 to \$3,000.

Opposition Committee members oppose this Recommendation.

Increasing the disclosure threshold has no policy merit and will only diminish the transparency of the disclosure laws and allow further donations to parties and candidates to go undisclosed. It is of concern that such a Recommendation is being supported by the Joint Standing Committee on Electoral Matters so soon after the tabling of the AEC's Funding and Disclosure Report from the 1998 Election.

The AEC's Report raised a number of specific concerns about the fundraising activities of the Liberal Party's associated entity *The Greenfields Foundation* and its exploitation of the disclosure rules.

The AEC recommended the closure of the loophole that allowed such bodies as *The Greenfields Foundation* to prosper, because there was no way to trace the real source of funds to political parties. The AEC report stated that:

It is apparent that a person, or in certain circumstances a corporation, who wishes to avoid full and open disclosure could do so by a series of transactions based on the Greenfields model.

The AEC believes that such potential circumvention of the intentions of the public disclosure provision in the Act should be addressed legislatively as a matter of priority.<sup>1</sup>

Directly relevant to this Recommendation, the AEC Report also noted that:

The only practical deterrent to donation splitting is to maintain a low disclosure threshold.<sup>2</sup>

Opposition Committee members endorse the AEC's concerns and oppose any Recommendation that weakens the integrity of the disclosure provisions of the Commonwealth Electoral Act.

## Recommendation 45

That the minimum donation before a donor is required to lodge a return be increased from \$1,500 to \$3,000.

Opposition Committee members oppose this Recommendation.

Increasing the threshold for returns has no policy merit and will only diminish the transparency of the disclosure laws and allow further political donations to go undisclosed.

## Recommendation 50

That the definition of a member of a political party at section 123(3) of the *Commonwealth Electoral Act 1918* be expanded to include the requirements that a person must:

- have been formally accepted as a member according to the party's rules;
- remain a valid member under party rules;
- not be a member of more than one registered political party unless the parties themselves have sanctioned it; and
- have paid an annual membership fee.

Opposition Committee members oppose this Recommendation.

---

1 Australian Electoral Commission. nd. *Funding and Disclosure Report following the Federal Election held on 3 October 1998*. Canberra, Union Offset Printers. p 18.

2 Australian Electoral Commission. nd. *Funding and Disclosure Report following the Federal Election held on 3 October 1998*. Canberra, Union Offset Printers. p 16.

We are concerned that this intrusion into the ability of parties to draft their own rules may not be appropriate, and that any such provisions may, unless they were very carefully drafted, have unintended consequences.

**Senator the Hon John Faulkner**

**Mr Micheal Danby MP**

**Mr Laurie Ferguson MP**





## **Minority Report**—Senator Andrew Bartlett and Senator Andrew Murray

### **Prologue**

This Minority Report has the following purposes: to further support and amplify some aspects of the Main Report; to qualify other aspects; to oppose some recommendations; and to provide some additional commentary on matters of relevance.

In the Democrats' Minority Report on the Joint Standing Committee on Electoral Matters (JSCEM) Report into the 1996 election, we drew attention to voter dissatisfaction with politics, politicians, and parliaments, expressed through polls and in the media. There appears to be little improvement regarding voter dissatisfaction since then, with no significant advance in parliamentary or political standards. While aspirations to higher standards may be idealistic, given the present political culture, nevertheless in our view such higher political standards remain worthy and necessary goals.

The JSCEM undoubtedly tries hard to play its part in improving democratic processes. By the nature of the Committee's processes however, its reform achievements tend to be incremental, and are often technical perforce. The Majority continue to ensure that big improvements that the Australian Democrats seek, for instance in recommendations on significant improvements in political governance, a more representative political system, truth in political advertising, and full disclosure of all types of political party income, remain out of reach. Nevertheless the Committee's work keeps a review and reformist focus on our electoral, political party, and political systems, which is very valuable.

## Chapter One: Introduction

### The 1998 federal election<sup>1</sup>

The 1998 election again demonstrated the weakness that democratically speaking, large numbers of voters who gave their primary vote to minor political parties are not directly represented in the House of Representatives (HoR).

In 1998 the two major parties secured 74.5% of the HoR vote. The Australian Labor Party secured a primary vote of 40.1%, and the Liberal party 34.2% (actually the Liberal Party and Country Liberal Party). Only one minor party, the National Party, gained representation in the HoR, with 5.3% of the vote. Of the minor parties not represented in the HoR, the most notable were One Nation 8.4%, the Democrats 5.1% and the Greens 2.6%, totalling 16.1%. One independent, Peter Andren, was elected to the HoR. Overall, 19.4% of voters were not represented in the HoR at all, having given their primary votes to parties and independents other than the Liberals, Labor or the Nationals.

One quarter of all Australian voters are not major party voters. This one-quarter of all Australian voters are reported as being referred to by the Business Council of Australia (BCA) as voting for parties “representing narrow sectoral interests”!<sup>2</sup> David Buckingham, Executive Director of the Business Council of Australia. Such remarks say more about BCA values and their attitudes to millions of Australians who do not vote Labor or Liberal, than about participants in the political system.

Although six political parties are represented in the two Federal houses of Parliament, many commentators still focus on bipartisan not cross-party politics. Australia is instead a truly multi party system, but with real weaknesses in representation in the HoR.

With 61.5% of voters not voting for the Government in the HoR, (which conversely however, holds 54.1% of the HoR seats), the nearly proportional representation nature of the Senate provides a useful and desirable democratic counter to the distorted and inadequate nature of HoR representation.

The role of the Senate as a brake on the excesses of an unrepresentative HoR, continues to be the subject of attack. There are powerful organisations and individuals who still seek to make our parliamentary democracy less democratic, less accountable and less progressive, by making the Senate less proportionally representative and more subservient to the HoR. In our view, it is the HoR that deserves more examination for democratic weakness, since its parliamentary role has been subordinated to its role as the House of the Executive.

---

1 For figures used in this section see ‘Federal Election Results 1949-1998’ Research Paper No 8 1998-1999 Parliamentary Library Information and Research Services

2 Financial Review Thursday 8 June 2000 p.10.

It is the Senate, free of the dominance of the Executive, which preserves the essence of the separation of powers, not the HoR. It is the Senate which protects the sovereignty of the people, not the HoR, which is dominated by a minority of voters with a majority of seats.

In the 1998 election 95.3% of Australians were represented by their party of choice in the Senate. In contrast to the HoR's 19.4%, only 4.7% of Senate voters were absolutely unrepresented.

The Main Report has not addressed the issues of representation at all, which is a great pity, because those issues go to the heart of democratic needs – the right to be represented.

The House of Representatives does need to be made more representative. The Democrats have suggested changes along the lines of those advocated by last year's Jenkins Royal Commission in the United Kingdom, which proposes a new electoral system comprising a form of 'mixed member proportional voting', which provides a compromise between the competing principles of local representation and fair representation.

There have been moves towards proportional voting systems in recent years in unicameral parliaments such as New Zealand, and the new parliaments of Scotland and Wales. Australia's traditional bias towards a majoritarian HoR 'two-party' (Coalition/Labor) system is becoming less common in the democratic world. The Democrats believe that in an era where we are constantly being exhorted to adopt 'best practice', it is time the same applied to something as fundamental as the way we elect our parliaments, governments, and heads of state.

## **Chapter Two: Pre-election**

### **Enrolment**

The Australian Democrats wish to reserve their position on the Main Report's Recommendation 3.

### **Access to the Roll**

During May 2000, as the Inquiry was drawing to a close, Senate Estimates Committee questioning brought into focus worrying questions concerning the end use of the electoral roll by parties other than the AEC. In this instance these third parties were government agencies. As a result of the matters exposed, the government has indicated that it may be necessary to amend section 91 of the Act, to better define how the roll may be used.

The Democrats opposed the successful amendment of the Act<sup>3</sup> to provide electors' gender, age and salutation details to members of parliament and registered political parties. There were 77 registered political parties for the 1998 election.<sup>4</sup>

The Democrats believe that the way in which the electoral roll is currently used needs reassessment, particularly from a security and privacy perspective. Accordingly we will examine ways in which section 91 can be amended.

---

### **Recommendation 3.1**

**That section 91 be amended to ensure that the end uses of the electoral roll are satisfactory from a privacy and security perspective.**

## **Political campaigns**

### **Caretaker conventions**

The concern outlined in the Main Report about breaches of the caretaker conventions dealing with government advertising during election periods, have escalated since into a general debate about the propriety of government advertising practices.

The Democrats believe that this whole area needs legislative correction. A powerful and truly independent committee is needed to oversee government publicity and advertising. Principles<sup>5</sup> similar to these following should form the basis for determination of whether government publicity and advertising is genuine, or whether it has partisan and political content.

- Information campaigns should be directed at the provision of objective, factual and explanatory information. Information should be presented in an unbiased and equitable manner.
- Information should be based on accurate, verifiable facts, carefully and precisely expressed in conformity with those facts. No claim or statement should be made which cannot be substantiated.
- The recipient of the information should always be able to distinguish clearly and easily between the facts on the one hand, and comment, opinion and analysis on the other.

---

3 Consequent to Recommendation 52 of 'The 1996 Federal Election JSCEM Report'

4 AEC Funding and Disclosure Report Election 98 p.27.

5 These principles are largely drawn from 'Taxation Reform Community Education and Information Programme' ANAO 1998

- 
- When making a comparison, the material should not mislead the recipient about the situation with which the comparison is made and it should state explicitly the basis for the comparison.
  - Information campaigns should not intentionally promote party-political interests, nor should they give rise to a reasonable perception that they promote any such interests. To this end:
    - ⇒ Material should be presented in unbiased and objective language, and in a manner free from partisan promotion of government policy and political argument.
    - ⇒ Material should not directly attack or scorn the views, policies or actions of others such as the policies and opinions of opposition parties or groups.
    - ⇒ Material should avoid party-political slogans or images.
  - Campaigns should be supported by a statement of the campaign's objective. The Committee would be entitled to consider whether this objective is legitimate, and whether the campaign is adapted to achieving the stated objective. Campaigns, which have little chance of success, should not be pursued.

The Committee would need to be empowered to order a public authority to do one or more of the following things:

- To immediately stop the dissemination of any government publicity that is for political purposes and that does not comply with the principles.
- To modify the content, style or method of dissemination of any such government publicity so that it will comply with the principles.
- To stop expenditure on any such government publicity or to limit expenditure so that the publicity will comply with the principles.

---

### **Recommendation 3.2**

**That both the caretaker conventions for government advertising and general government advertising conventions be legislated.**

## How To Vote cards

How-to-vote provisions vary widely in the various electoral acts governing the elections for our nine parliaments. Political parties contesting elections at all levels of government would benefit significantly from consistent and common practices across the nine jurisdictions. There is certainly enough experience to form a final view in each political party who contest elections across Australia, which should provide a basis for negotiation for state, territory and federal practices to be made as consistent as possible. How-to-vote card regulation is an area badly in need of harmonisation and common practice.

In our Minority Report on the 1996 election we commented at some length on the need for better regulation of how-to-vote cards. The Democrats recommended the melding of the Tasmanian and New South Wales laws into Federal law. We moved amendments to that effect which were defeated in the Senate. We continue to urge the JCSEM and the Parliament to address the need for better regulation and harmonisation in this area.

### **Recommendation 3.3**

**That the JCSEM initiate a cooperative inter-state parliamentary committee to find ways to make how-to-vote laws and regulations as consistent as possible across all Australian parliamentary jurisdictions.**

We remain of the view that how-to-vote cards should be displayed in polling booths rather than handed out. We recognise that there is doubt as to the practical effects of such a system. The best way to find out is to trial the proposal. The advantages of the proposal are self evident, against the costs, aggravation and harassment of the present system. The greatest loss from changing current practices would probably be the motivational effect and camaraderie associated with turning out for your candidate and promoting his or her how-to-vote.

### **Recommendation 3.4**

**That the AEC take an early opportunity to trial, at a by-election, systems of displaying how-to-vote material inside polling booths.**

---

## Truth in political advertising

The Australian Democrats have actively campaigned to introduce 'truth in political advertising' legislation in Australia since the early 1980's. Our Minority Report on the 1996 election had an extensive section on this topic.

The Coalition parties, in their dissenting report to the JCSEM inquiry into the 1993 election supported the reinstatement of 'truth in political advertising'. In Government they have resiled from that view. The majority in the Main Report endorses the view of the AEC that controls on the content of political advertisements would be unworkable. We disagree. If it were true, such an argument could apply to the misleading and deceptive conduct provisions of the Trade Practices Act, which it patently does not do. If it is possible to force businesses to be honest in their advertising then why is it any more difficult with respect to political parties? Especially when there is a working and long standing precedent in South Australia.

Political advertising in Australia must be better controlled. Legislation should be enacted to impose penalties for failure to represent the truth in political advertisements. The enforcement of such legislation would advance political standards, promote fairness, improve accountability and restore trust in politicians and the political system.

The need for improved controls on political advertising in Australia is important because elections are one of the key accountability mechanisms in our system of government. Advertisements disseminated during an election campaign must be legally required to represent the truth. Advertisements purporting to represent 'facts' must be legally required to do so accurately. In this way politicians can be held accountable for election promises designed to win over the electorate.

Greater controls over political advertising will also help stem the public perception that politicians are not trustworthy. This perception is one of the most serious threats to the legitimacy and integrity of Australian democracy.

In 1983 the Commonwealth Parliament introduced laws regulating political advertising (Section 392(2) of the Act), but these were repealed again prior to the 1984 election.

In 1985 the South Australian Parliament enacted the *Electoral Act 1985 (SA)*. Section 113 of the Act makes it an offence to authorise or publish an advertisement purporting to be a statement of fact, when the statement is inaccurate and misleading to a material extent. 'Electoral advertisement' is defined to mean an advertisement containing electoral matter. 'Electoral matters' are matters calculated to affect the result of an election

The legislation has been tested in the Supreme Court of South Australia, where it was held to be constitutionally valid. Further, it did not infringe the implied

‘freedom of speech’ found by the High Court to exist in the Commonwealth Constitution.

The Commonwealth Parliament has examined proposed legislation similar to the South Australian Act concerning truth in political advertising. In 1995 it considered amendments to the *Commonwealth Electoral Act 1918*. Provision was to be made prohibiting persons, during an election, from printing, publishing, or distributing any electoral advertisement containing a statement that was untrue, or misleading or deceptive. However with the dissolution of the Commonwealth Parliament for the 1996 election, the amendments lapsed.

Regulation of political advertising can take various forms, including:

- regulation through the advertising industry;
- regulation through guidelines; and
- regulation through legislation.

The reign of self-regulation as the preferable method of overseeing conduct has come to an end with the decline of the 1980s ideology of mass deregulation. Self-regulation has been demonstrably deficient in a number of areas in which it was introduced. Experience teaches that when the competitive interests of political parties are at stake, only force of law will ensure that reasonable standards on truthfulness are upheld.

---

### **Recommendation 3.5**

**The preferable method of regulation of political advertising is by legislation:**

- a) The *Commonwealth Electoral Act* should be amended to prohibit inaccurate or misleading statements of fact which are likely to deceive or mislead;**
- b) The above amendments should be modelled on the South Australian legislation, which has worked effectively since its introduction, is limited to election periods, and excludes election material other than advertisements.**



---

## Chapter Three: Election day

### Voting on election day

#### Voting by prisoners

The Main Report appears to give in-principle support to the wider enfranchisement of prisoners than the current law permits. The Report backs away from recommending reform in this area, however, because the majority believe such a move would not receive wide community support. We are not convinced that there is sufficient research done to make such an assertion. Anyway many progressive reforms would not be achieved if wide community support were the main threshold criteria. Parliaments have sometimes had to give leadership and could do so in this instance too.

It is important to understand that, although prisoners are deprived of their liberty whilst in detention, they are not deprived of their citizenry of this nation. As part of their citizenship, convicted persons in detention should be entitled to vote. To deny them this is to impose an additional penalty on top of that judged appropriate by the court. There is no logical connection between the commission of an offence and the right to vote. For example, why should a journalist, who is imprisoned for refusing on principle to provide a Court with the name of a source, be denied the vote?

To complicate this further, there is no uniformity amongst the states or between the states and the Commonwealth as to what constitutes an offence punishable by imprisonment. In WA, for example, there is a scheme whereby fine defaulters lose their license rather than go to prison, yet this has not been introduced uniformly in Australia. So why should an Australian citizen in Western Australia who defaults on a fine but is not jailed, retain the right to vote, whilst an Australian citizen in another jurisdiction who is jailed for the same offence lose the right to vote? This is inequitable and unacceptable.

Australia is a signatory to the International Covenant on Civil and Political Rights Article 25. Article 25, in combination with Article 2, provides that every citizen shall have the right to vote at elections under universal suffrage without a distinction of any kind on the basis of race, sex or other status. The existing law discriminates against convicted persons in detention on the basis of their legal status. This clearly runs contrary to the letter and spirit of the Covenant.

A society should tread very carefully when it deals with the fundamental rights of its citizenry. All citizens of Australia should be entitled to vote. It is a right that attaches to citizenship of this country, and should not be removed.

**Recommendation 4.1**

**The Commonwealth Electoral Act be amended to give all persons in detention, except those convicted of treason or who are of unsound mind, the right to vote.**

**Chapter Four: After the close of the poll****Compulsory voting**

This topic was extensively discussed in the Report on the 1996 election, and the Majority recommended to end compulsory voting. The Democrats support compulsory voting, and gave detailed reasons for that position in our Minority Report on the 1996 election. We recommend our extensive remarks in that Report for a full exposition of the topic.

The 1998 Report accepts that there is broad public and political support for compulsory voting and deals with this matter much more cursorily, briefly in the introduction to Chapter 1, and in two pages in Chapter 4. However, the Main Report still paints compulsory voting as something of a democratic oddity, supported “by very few countries”.

The facts say otherwise. The research available is limited but the tables below indicate the factual situation. According to *Freedom in the world: the annual survey of political rights and civil liberties 1998-1999* there are 141 countries broadly classified as democracies, even although many of them can only be considered ‘partly free’, and some are considered ‘not free’. These countries represent 66.4% of the world’s population, or 3 925 million people. 24 countries (17% of all democracies) and 606 million people (15% of all democracies) are in partly or fully compulsory voting democracies.

While still in a democratic minority, compulsory voting is hardly a democratic oddity.

### Countries with compulsory voting

Country	Status*	Population *	Constitutional or legal authority/comments/Penalty
Argentina	Free	36 100 000	Constitution. Article 37. Introduced 1912 by "Saénz Peña Law". Enshrined in Constitution in 1994. Some exceptions – health, distance. Various penalties: Fine. Not entitled to hold public office for 3 years.
Australia	Free	18 700 000	Introduced 1924. <i>Commonwealth Electoral Act 1918</i> , section 245. Fine of \$20.
Austria	Free	8 100 000	Compulsory in 2 provinces, Tyrol and Vorarlberg, for provincial and presidential elections. Fine 1000 schillings for failure to vote without valid reason.
Belgium	Free	10 200 000	Constitution. Article 48. Adopted 1831. Revised 1920. Persons unable to vote personally may give power of attorney to family member. Penalties are official reprimands or fines.
Bolivia	Free	8 000 000	Constitution. Title 9. Electoral regime, Chapter 1. Suffrage. Article 219. 'Suffrage constitutes the foundation of the representative democratic regime and it is based on the universal, direct and equal, individual and secret, free and obligatory vote; on a public counting of votes, and on a system of proportional representation.' Electoral Code. Chapter 2. Suffrage. Article 6. 'obligatory, because it constitutes a responsibility which cannot be renounced.'
Brazil	Partly free	162 100 000	Constitution. Article 14. Compulsory for citizens 18 years and over. Optional for illiterates and those over 70, and for those between 16 and 18 years. Fine
Chile	Free	14 800 000	Constitution. Article 15. "in popular voting, vote shall be personal, egalitarian and secret. In addition, for citizens it shall be compulsory."
Cyprus	Free	700 000	Electoral Bill. Voting is compulsory and failure to vote constitutes a criminal offence. Fine of up to CY 200. Chapter 8, article 6 of Bill for the Registration of Electors and the Registrar of Electors makes registration compulsory. Failure to register: imprisonment of up to one month or fine of up to CY75 or both. Provisions applicable for unjustifiable failure to vote or register.
Ecuador	Free	12 200 000	Introduced in 1905. Constitution and National Law of Elections. Optional for illiterates or for over 65. Penalty: deprivation of civil rights
Egypt	Not free	65 500 000	Constitution. Article 62. 'Participation in public life is a national duty.'
Fiji Islands	Partly free	800 000	1998 Constitution. (Suspended 2000). Chapter 6, part 2, sections 54-57. \$20 fine for failure to vote, \$50 for failure to register

Country	Status*	Population *	Constitutional or legal authority/comments/Penalty
Greece	Free	10 500 000	<p>Constitution of the Hellenic Republic, 1975, revised 1986. Article 51, Paragraph 3.</p> <p>'The members of Parliament shall be elected through direct, universal and secret ballot by citizens who have the right to vote, as specified by law. The law cannot abridge the right to vote except in cases where minimum voting age has not been attained or in cases of illegal incapacity or as a result of irrevocable criminal conviction for certain felonies.</p> <p>Paragraph 5. 'Exercise of the right to vote shall be compulsory. Exceptions and penalties shall be specified each time by law.'</p> <p>Presidential Act No 92/9-5-94. Article 6. Paragraph 2. "exercise of the right to vote is compulsory."</p> <p>Law No 2623/25.6.98 provides voting is not compulsory for citizens over 70, or for electors overseas on national or European election days.</p>
Italy	Free	57 700 000	<p>Constitution. Article 48.2 'the vote is personal and equal, free and confidential. Voting is a civic duty'. Failure to vote may be noted on official papers.</p>
Liechtenstein	Free	30 000	<p>Voting is compulsory, but no penalty applies for failure to vote.</p>
Luxembourg	Free	400 000	<p>CIA Factbook.: Parline. Fine</p>
Nauru	Free	10 000	<p>Compulsory for Nauruans aged over 20.</p>
Paraguay	Partly free	5 200 000	<p>Constitution. Article 118. Suffrage is a right, a duty, and a public function of a voter. It is the basis of a representative democracy. It is based on universal, free, direct, equal and secret voting, as well as on a publicly supervised vote count and a proportional representation system.</p> <p>Ley</p>
Peru	Partly free	26 100 000	<p>Constitution. Article 31. 'Voting is individual, equal, free, secret and obligatory up to the age of 70. It is optional after that age.'</p>
Singapore	Partly free	3 900 000	<p>Parliamentary Elections Act 1959. \$5.00 penalty.</p>
Switzerland	Free	7 100 000	<p>The small canton of Schaffhausen has compulsory voting on all cantonal matters and in referenda.</p>
Thailand	Free	61 100 000	<p>Constitution 1997. Chapter IV, Section 68. 'Every person shall have a duty to exercise his or her right to vote at an election.</p> <p>The person who fails to vote without notifying the appropriate cause of the inability to attend the election shall lose his or her right to vote as provided by law.</p> <p>The notification of the inability to attend the election and the provision of facilities for the attendance thereat shall be in accordance with the provisions of law.'</p>
Turkey	Partly free	64 800 000	<p>AEC. See also 'Elections round up: Turkey' in <i>Representation</i>, Vol.36, No.2, Summer 1999:188.</p>

Country	Status*	Population *	Constitutional or legal authority/comments/Penalty
Uruguay	Free	3 200 000	Constitution. Article 77. 'Suffrage shall be exercised in the manner determined by law, but on the following bases: Compulsory inscription in the Civil Register. Secret and compulsory vote. The law, by an absolute majority of the full membership of each chamber, shall regulate the fulfilment of this obligation.' Fine
Venezuela	Free	23 300 000	Adopted 1961. Constitution states voting is a right and also a duty. No penalty for not voting, but voting is necessary for some public service appointments, eg diplomatic service.

\*Freedom status and population statistics taken from *Freedom in the world: The annual survey of political rights and civil liberties 1998-1999*. Freedom House: New York, 1999.

## Chapter 5: Other issues

### Funding and disclosure

#### Disclosure

We dealt with funding and disclosure issues at length in our Minority Report on the 1996 election. These remarks are additional to much of those, but are continuous.

Even although tightened disclosure regulations were introduced under the 1984 *Commonwealth Electoral Legislation Amendment Act*, stricter measures have been required because of continuing concern about the unethical problems arising from ongoing disclosure avoidance. It sometimes seems as if reforms governing disclosure are only effective for the amount of time it takes for some accountants, some lawyers and some political parties to discover ways to circumvent or ignore them.

It is essential that we have a comprehensive regulatory system that legally requires the publication of explicit details of the true sources of donations to political parties, and the destinations of their expenditure. The recommendations in the Main Report do little to address this. The objectives of such a regime are to prevent, or at least discourage, corrupt, illegal or improper conduct in the formulation or execution of public policy. But the side benefits of such accountability are a revival of faith in the integrity of the political system amongst the wider public, and the protection of politicians from the undue influence of donors.

Some political parties, in seeking to preserve the secrecy surrounding some of their funding, claim that confidentiality is essential for donors who do not wish to be publicly identified with a particular party. But the privacy considerations for donors, although in some cases perhaps understandable, must be made subordinate to the wider public interest of an open and accountable system of government. Further, if donors have no intention of influencing policy directions of political parties, they would not be dissuaded by such a transparent scheme.

### **Recommendation 6.1**

**Additional disclosure requirements to apply to Political Parties and Candidates: Any donation of over \$10000 to a political party should be disclosed within a short period to the Electoral Commission who should publish it on their website so that it can be made public straight away, rather than leaving it until an annual return.**

One of the key screening devices for hiding the true source of donations is the use of Trusts. The AEC<sup>6</sup> has dealt with some of these matters in Recommendations 6-8 concerning associated entities. The Labor Party<sup>7</sup> has given in-principle support to some of the AEC's recommendations, which the Democrats welcome.

The Democrats continue to recommend strong disclosure provisions for trusts.

### **Recommendation 6.2**

**Additional disclosure requirements to apply to Donors: Political parties that receive donations from Trusts or Foundations should be obliged to return the money unless the following is fully disclosed:**

- a declaration of beneficial and ultimate control of the trust estate, including the trustees;
- a declaration of the identities of the beneficiaries of the trust estate, including in the case of individuals, their countries of residence and, in the case of beneficiaries who are not individuals, their countries of incorporation or registration, as the case may be;
- details of any relationships with other entities;
- the percentage distribution of income within the trust;

---

6 AEC Funding and Disclosure Report Election 98

7 Media Release 2 June 2000

- 
- **any changes during the donations year in relation to the information provided above.**

Another key screening device for hiding the true source of donations are certain 'clubs'. Such clubs are simply devices for aggregating large donations, so that the true identity of big donors is not disclosed to the public:

### **Recommendation 6.3**

**Political parties that receive donations from clubs (greater than those standard low amounts generally permitted as not needing disclosure) should be obliged to return these funds unless full disclosure of the true donor's identities are made.**

One more contentious issue regarding arms-length donations is the question of political parties receiving large amounts of money from foreign-owned companies. A tight disclosure regime has the potential to promote the establishment of overseas holding companies to which donations could be made from Australia. These monies could then be donated by the overseas company back to Australia as a means of masking the actual Australian origins of its income.

### **Recommendation 6.4**

**That the JSCEM and the AEC give closer scrutiny to donations from overseas.**

Section 17(2) of the Act results in invaluable reports being provided to the public by the AEC on funding and disclosure issues.<sup>8</sup> In 1996 and 1998 the AEC made 18 and 16 recommendations respectively. These offer considerable improvements to funding and disclosure.

### **Recommendation 6.5**

**As we did following the AEC's 1996 Funding and Disclosure Report, the Democrats will move amendments to the Act of those recommendations that are relevant to higher standards, if the Government's response to the AEC's recommendations proves inadequate.**

---

<sup>8</sup> Such as AEC Funding and Disclosure Reports Election 96 and 98.

Ultimately, to minimise the public perception of corruptibility associated with political donations, a good donations policy should forbid a political party from receiving inordinately large donations.

### **Recommendation 6.6**

**A ceiling should be placed on the amount of money any corporation or organisation can donate to a political party.**

In most cases, donors appear to make donations to political parties for broadly altruistic purposes, in that the donor supports the party and its policies, and is willing to donate to ensure the party's candidates and policies are represented in parliament. Nevertheless, there is a perception (and probably a reality), that some donors specifically tie large donations to the pursuit of specific policies they want achieved in their self-interest. This is corruption.

### **Recommendation 6.7**

**The Act should specifically prohibit donations which have 'strings attached.'**

In sum, although in any democracy some political parties will always have more money than others, money and the exercise of influence should not be inevitably connected in the public's perception.

## **Registration of political parties**

### **Party constitutions**

Political donations disclosure laws are not sufficient protection against potential corruption unless accompanied by political party regulation to materially improve political governance. Political governance needs to be focussed on as a reform priority. Political governance includes how a political party operates, how it is managed, its corporate and other structures, the provisions of its constitution, how it resolves disputes and ethical issues, its culture, and how transparent and accountable it is.

Political parties are absolutely integral to Australian society and economy. They wield enormous influence over the life of every Australian, yet they are largely ignored in our Constitution, and are the least regulated sector of Australian organisations. There are none of the very proper and necessary safeguards for political party regulation that are there for corporations under the Corporations Law for instance.



The common law has been of little assistance in providing the necessary safeguards. To date the Courts have been reluctant to imply common law provisions (such as on membership or pre-selections) into political party constitutions, although they have determined that disputes within political parties are justiciable.

The present *Commonwealth Electoral Act 1918* does not address the internal rules and procedures of political parties. The Main Report recommends (No.52) that political parties be required to lodge a constitution with the AEC that must contain certain minimal elements. Whilst we believe this recommendation is a significant one, we believe it does not go far enough.

The AEC deals with a number of these issues in Recommendations 13-16.<sup>9</sup> Recommendation 16 asks that the Act provide the AEC with the power to set standard, minimum rules which would apply to registered political parties where the parties own constitution is silent or unclear. This too is a significant recommendation, which should be given consideration.

Political parties are now publicly funded, so the public therefore has a right to know the ways in which political parties receive and spend public funds. Further, political parties are capable of exercising enormous power that affects all Australians. The public influence and purpose of political parties therefore demands that they be open to scrutiny and be fully publicly accountable.

The Australian Democrats believe that political parties and organisations should continue to operate under special financial disclosure regulations, to help create a corruption free and honest political system, and that such disclosure should be materially improved. Such financial disclosure should be accompanied by a strong emphasis on political governance reform.

### **Recommendation 6.8**

**The following initiatives would bring political parties under the type of accountability regime that should go with their place in our system of government:**

- a) The *Commonwealth Electoral Act* be amended to require standard items to be set out in a political party's constitution, in a similar manner to the Corporations Law requirements for the constitutions of Companies;**
- b) Requiring registered parties to demonstrate after each federal election that they still retain the required number of members;**

- c) **Only enabling a person's name and details to be put forward as a member of one political party (unless the political parties concerned themselves agree otherwise).**
- d) **Broaden the scope for objection to proposed names and abbreviations to reduce the prospect for misleading or deceptive names being approved.**
- e) **The key constitutional principles of political parties should include:**
  - **the conditions and rules of membership of a Party;**
  - **how office-bearers are preselected and elected;**
  - **how preselection of political candidates is to be conducted;**
  - **the processes that exist for dispute resolution;**
  - **the processes that exist for changing the constitution.**
- f) **The relationship between the party machine and the party membership requires better and more standard regulatory, constitutional and selection systems and procedures, which would enhance the relationship between the party hierarchy, office-bearers, employees, political representatives and the members. Specific regulatory oversight to include:**
  - **Scrutiny of the procedures for the preselection of candidates in the constitutions of parties to ensure they are democratic;**
  - **All important ballot procedures within political parties to be overseen by the AEC to ensure proper electoral practices are adhered to.**

The party constitutions recommendation of ours may not go far enough in addressing the scourge of branch-stacking and pre-selection abuse which appears to occur in many political parties. Such practices pose great dangers for political standards.

A Member or Senator who has won their seat through branch stacking or pre-selection abuse can be seen as morally corrupt. That such parliamentarians can then rise to power in government or parliament is a concern.

Regrettably, no political party is safe from attempted branch stacking, the Australian Democrats included. However, it is the energy and determination with which branch stacking is dealt with, that distinguishes the standards of the political parties concerned.

**Recommendation 6.9**

**That the JSCEM and the AEC give closer scrutiny to branch stacking and pre-selection abuses.**

Since the 60's the Labor Party has been particularly strong about the principle of 'one vote one value', first introducing legislation in the Federal Parliament in 1972/3. In recent years the ALP have taken the matter to the High Court with respect to the West Australian electoral system. They should therefore be expected to support 'one vote one value' as a principle within political parties.

The democratic principle of 'one vote one value' is well established, and widely supported. During the 70's, 80's, and 90's the principle of 'one vote one value', with a practical and limited permissible variation, was introduced to all federal, state and territory electoral law in Australia, except Western Australia's. As far back as February 1964 the US Supreme Court gave specific support to the principle.

Some political parties in Australia have internal voting systems that give some members greater voting power than other members, resulting in gerrymandered elections for conventions, delegates and various ballot. If more powerful votes are also directly linked to consequent political donations and power over party policies, then the dangers are obvious.

If 'one vote one value' were translated into political parties, it would mean that no member's vote would count more than another's would, which would seem one way of doing away with undemocratic and manipulated pre-selections, delegate selections, or balloted matters.

**Recommendation 6.10**

**That the *Commonwealth Electoral Act 1918* be amended to ensure the principle of 'one vote one value' be a prerequisite of political party processes.**

## Section 44 of the Constitution

### Sections 44(i) and 44(iv)

Section 44(i) of the Constitution has provoked litigation in the past, the leading case being *Sykes v Cleary* (No.2) of 1992 concerning, *inter alia*, the validity of the candidacy of Mr Delacretaz and Mr Kardamitis who both held dual citizenships. It has most recently manifested itself in the disqualification of Heather Hill from the Senate.<sup>10</sup>

The section was drawn up at a time when there was no concept of Australian citizenship, when Australian residents were either British subjects or aliens. It was designed to ensure the Parliament was free of aliens as so defined at that time. The Democrats accept, however, that the sentiment of the section, that only Australians should be eligible to stand as representatives for the Federal Parliament, is a valid and continuing one. But this is not to say that section 44(i) of the Constitution as it currently stands is the most appropriate means to achieving that end.

Rather, it contains notions such as “any acknowledgment, of allegiance, obedience or adherence to a foreign power”. Such reference to a foreign power brings the oath each Member or Senator takes upon assuming his or her seat into contradiction with the existing Constitutional provision. The oath requires Members to: “swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her heirs and successors according to law”. On a strict reading some believe that that may be an unequivocal declaration of “allegiance, obedience or adherence to a foreign power” as prohibited by section 44(i). However, the Clerk of the Senate maintains that you cannot violate one constitutional provision by following the requirement of another constitutional provision.<sup>11</sup> He also notes that the High Court has noted that in swearing allegiance to the queen of Australia, although she is also the Queen of the United Kingdom, is not swearing an oath to her in that second role.

The House of Representatives Standing Committee on Legal and Constitutional Affairs Report of July 1997 recommended that s44(i) be replaced by a provision requiring that all candidates be Australian citizens, and it went further to suggest the new provision empower the Parliament to enact legislation determining the grounds for disqualification of members in relation to foreign allegiance. That is, the Committee acknowledged that there are some situations, such as where a Prime Minister, for example, held dual citizenship, that may cause concern to the Australian people. A provision leaving the door open to Parliament to legislate to put some better-expressed requirements as to dual citizenship in place would seem a sensible compromise.

---

10 Sue v Hill

11 Letter to the JCSEM 5 June 2000

---

The Constitutional Commission, in its Final Report of 1988, recommended that s44(i) be deleted and that Australian citizenship instead be the requirement for candidacy, with the Parliament being empowered to make laws as to residency requirements.

Going further back, the Senate Standing Committee on Constitutional and Legal Affairs in its 1981 Report: *The Constitutional Qualifications of Members of Parliament*, recommended that Australian Citizenship be the constitutional qualification for parliamentary membership, with questions of the various grades of foreign allegiance being relegated to the legislative sphere.

It is therefore clear that, especially in view of the multicultural nature of Australian society, contemporary standards demand that Australian citizenship be the sole requirement for being chosen for Parliament under a new s44(i), with a residual legislative power being given to the Parliament to deal with unique cases that may arise from time to time.

s44(iv) has its origins in the Succession to the Crown Act 1707 (UK). Its purpose there was essentially to do with the separation of powers; the idea being to prevent undue control of the House of Commons by members being employed by the Crown.

Obviously times have changed, even though the ancient struggle between executive and parliament continues to this day. Whilst this provision may have been appropriate centuries ago, the growth of the machinery of government has meant that its contemporary effect is to prevent the many thousands of citizens employed in the public sector from standing for election without any real justification.

The Democrats in Western Australia, for example, with fourteen lower house seats to contest at the 1998 election, had seven potential Democrats candidates who would not nominate for pre-selection due to their unwillingness to resign from their public sector positions.

The Australian Democrats have a long history of trying to rectify this part of the Constitution. In February 1980, former Democrat Senator Colin Mason moved a motion which resulted in the inquiry referred to earlier by the Standing Committee on Constitutional and Legal Affairs into the Government's order that public servants resign before nomination for election. In 1985 and again in 1989 the Democrats introduced a Bill putting the recommendations of that Committee into effect. Then in 1992 we introduced a Bill following the Constitutional Commission's Report to implement those recommendations.

The House of Representatives Standing Committee on Legal and Constitutional Affairs Report of July 1997 recommended that s44(iv) be deleted and replaced by provisions preventing judicial officers from nominating without resigning their posts and other provisions empowering the Parliament to specify other offices

which would be declared vacant should the office-holder be elected to Parliament. The Democrats support this recommendation.

The last paragraph of s44 should be deleted in its entirety. Indeed, the Standing Committee on Legal and Constitutional Affairs Report of July 1997 noted that if its recommendations concerning ss44(i) & (iv) were accepted, the last paragraph of s44 should be deleted. We concur with that view.

The Main Report acknowledges the problems with s44, but its recommendation (No.57) needs to go further in solving these problems.

### **Recommendation 6.11**

- a) That s44(i) of the Constitution be replaced by a requirement that all candidates be Australian citizens and meet any further requirements set by the Parliament.**
- b) That s44(iv) of the Constitution be replaced by provisions preventing judicial officers only from nominating without resigning their posts, and giving Parliament power to specify other offices to be declared vacant should an office-holder be elected.**
- c) That the last paragraph of s44 of the Constitution be deleted.**

### **Four year terms**

The Main Report recommends four-year terms for the House of Representatives. The Democrats support that recommendation and advocated such a step in our Minority Report into the 1996 election. We go further however and advocate that elections should be held on a predetermined date – in other words, fixed terms.

Snap and early elections are called for personal and party advantage, arbitrarily, sometimes capriciously, and always on a partisan basis. If elections were held on a predetermined date it would allow for certainty, stability, and responsibility by both government and opposition, allow for sound party and independent preparation, and allow for fair political competition.

The present system leads to short-termism and wastes money. The Constitution presently sets a 3 year 3 month maximum cycle between elections, but in the last century the average Federal parliamentary term has been only 2 years 5 months. Depending on whether you use the 3 year term or 3 year 3 month maximum cycle, Australia should not have held more than 32 elections at the most last century. Instead they had 38, which represents a significant additional elections cost of between \$800 and \$1 billion million in today's money.

**Recommendation 6.12**

**That the dates of elections be fixed and preset by legislation.**

**Allow simultaneous elections**

If four year terms were to become a reality, the HoR would join every state government in Australia bar Queensland, which also has a three year term. If fixed dates for elections were to also become a reality, it would open up the possibility for simultaneous elections as well, although these could eventuate anyway, if they were not prohibited by the act.

The Democrats are of the opinion that simultaneous elections should not be banned outright – they should at least be at the discretion of the governments concerned. The issue is simply one of cost and convenience. In the United States of America for example, simultaneous elections are a long-standing, regular and unexceptional feature of their election system. Australians are in frequent election mode, with nine governments holding Federal, State and Territory elections, hundreds of local government elections, as well as referenda and plebiscites at all three levels of government.

In 1922 the *Commonwealth Electoral Act 1918* was amended to prevent simultaneous Federal and State elections. The 1988 Constitutional commission recommended that this provision be repealed.

**Recommendation 6.13**

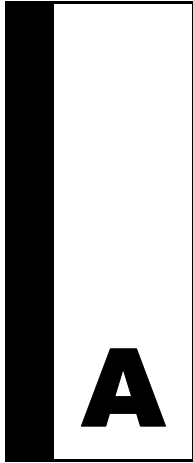
**That subsection 394(1) of the *Commonwealth Electoral Act 1918* be repealed.**

**Senator Andrew Bartlett**

**Senator Andrew Murray**







## **Appendix A – List of Submissions**

<b>Submission No.</b>	<b>Individual/Organisation</b>
1	Mr A J Beeney
2	Mr Ed Wensing
3	Mrs Beth Usher
4	Mr Donald Gudgeon
5	Ms Marilyn Wilkin
6	Mr John Ginesi
7	Ms Angela Usher
8	Mr John Middleton
9	Dr Peter Norris
10	Mr Michael Fallis
11	Mr Sydney Gilchrist
12	Mr Mojmir Damjanovic
13	Mr Adrian Vaughan BE
14	Dr Marian Sawyer AO PhD Visiting Fellow Political Science Program ANU
15	Mr David Haselgrove
16	Ms Fran Bailey MP Federal Member for McEwen
17	Mr Alan Emms

<b>Submission No.</b>	<b>Individual/Organisation</b>
18	Mr Syd Stirling MLA Member for Nhulunbuy, NT
19	Mr Russell Shaw
20	Ms Bronwyn Boag
21	Ms Margaret Woodgate
22	Mr Barry Wakelin MP Federal Member for Grey
23	Mr Dean Le Poidevin Le Poidevin & Co Barristers & Solicitors
24	Mr Robert McClelland MP Shadow Attorney-General Federal Member for Barton
25	Mr Peter Andren MP Federal Member for Calare
26	Senator the Hon Margaret Reid President of the Senate Senator for the ACT
27	Ms H Williams
28	Mr Neville Peck
29	Australian Democrats Gold Coast Branch
30	Mr A B McMullin
31	Mr Brian Cox
32	Mr Malcolm Mackerras
33	Mrs H E Morgan
34	Mr D Z Knoch President ALMA, AS
35	Mr Graehame Maskell
36	Mr Allen Hampton
37	Mr J Jones

---

<b>Submission No.</b>	<b>Individual/Organisation</b>
38	Ms Pam Hyland Co – ordinator Labor Women (Hobart)
39	Mr David Mudgee
40	Mrs Eleanor Betteridge
41	Monarchist Association of South Australia
42	Pauline Hanson's One Nation Logan Branch
43	Mrs B James
44	Hon Lou Lieberman MP Federal Member for Indi
45	Mr Eero Laurila
46	Mr John Nicholas
47	Mr Maxwell Gray
48	Argus International Pty Ltd
49	Mr D G Ogle
50	Mr and Mrs Reynolds
51	Mr Alan Thornely
52	Mr Joseph Underhill
53	Mr George Bradney
54	Ms Denise Carrington - Smith
55	Mr Nigel Kendall
56	G W Spence
57	Mr Herbert Bolles
58	Allyn Ellison
59	Mr Gordon Wadsworth
60	Australian Democrats South Australian Division
61	Rio Kowald
62	Mr David Kitto
63	Miss M A Clinch

<b>Submission No.</b>	<b>Individual/Organisation</b>
64	Mr Don McNaught
65	Mr J M Moller
66	Mrs Linda Franzman
67	Mr O H Darmanin
68	E H Vaughan
69	Mrs Annette Adams
70	Mr & Mrs Baker
71	Mr D N Bruderlin
72	Mr Clive Hewson
73	Mr Neil Gillespie
74	Mr and Mrs Bruce and Gillian Lord
75	Mrs Janette Dobson
76	Mr Graeme Lee
77	Voters Against Legal Unfair Elections
78	Voters Against Legal Unfair Elections (Supplementary Submission)
79	Mr Antony Green
80	Mr Arthur Hine
81	Mr John Hugo
82	Voters Against Legal Unfair Elections (Supplementary Submission)
83	Mr Malcolm McClure
84	Mr John McEwen
85	Mr Jim Stewart
86	Mr Arthur Tuck
87	Mr Jim Markwell
88	Australian Electoral Commission
89	Mr and Mrs John and Lorraine de Fredrick

---

<b>Submission No.</b>	<b>Individual/Organisation</b>
90	Mr John de Fredrick
91	Mr John Turner JP
92	Northern Territory Country Liberal Party
93	Mrs June Beckett
94	Pauline Hanson's One Nation Gilgandra Branch
95	Ms Shirley Jackson
96	Mr Colin Gibson
97	Mr Leigh Sheilds
98	Mrs Patricia Daly JP
100	Mr J Russell
101	Mr H R W Hoile
102	Mr Lindsay Johnson
103	Mr D G Jones
104	Mr and Mrs Harry Whitton
105	Mr and Mrs P R Bingle
106	Mrs Judith Thamm
107	Ms Beth Hudson
109	Mr and Mrs Alan and Eleanor Betteridge
110	V Patricky
111	Mr James Johnson
112	Mr Cyn Bevan
113	Pauline Hanson's One Nation Victor Harbour Branch
114	Mr Tony Robinson MP Member for Mitcham, VIC
115	Pauline Hanson's One Nation Brisbane Central Branch
116	Mr Kevin McSweeney
117	Mr Peter Read
118	Mr Walter MacMillan

<b>Submission No.</b>	<b>Individual/Organisation</b>
119	Mr Greg Carter
120	Pauline Hanson's One Nation Wavell Branch
121	Mr Graham Grant
122	Mr E Lockett
123	Australian Labor Party Charters Towers Branch
124	Ms Mishka Buhler
125	Mr Lewis Bauer
126	W L Latimer
127	Mr James Dwyer
128	Mr Charles Griffith
129	Mr Ron van de Wiel
130	Mr David Little
131	Mr Ken Lane
132	Ms Elizabeth Addison - Baker
133	The Electoral Reform Society of South Australia
134	Mr M Goldstiver
135	Mr David Perham
136	Mr Ken Briggs
137	Mrs Evelyn Hale
138	Mrs Ann Di Santo
139	Pauline Hanson's One Nation Nambour and District Branch
140	Mrs Cheryl Edwardes MLA Minister for Environment and Labour Relations Member for Kingsley, WA
141	Mr Jim Lloyd MP Federal Member for Robertson
142	Mrs M M Horne
143	Ms Vanessa Stewart
144	Office of the Leader of Pauline Hanson's One Nation Party, Queensland Parliament

---

<b>Submission No.</b>	<b>Individual/Organisation</b>
145	Mr Mark Roberts
146	Ms Faye Gregg
147	Pauline Hanson's One Nation Oakey Branch
148	S D Gregg
149	Mr George Williamson
150	Mr John King
151	Mr D G Holmes
152	Dr Ralph Beckwith
153	Mr Ian Nelson
154	Mr and Mrs GR and M Hoal
155	Ms Margaret Sawers
156	Mr Robert Provan
157	Senator The Hon Grant Tambling Parliamentary Secretary to the Minister for Health and Aged Care Senator for the Northern Territory
158	Mr Alan Morris MP Federal Member for Newcastle
159	Australian Electoral Commission (Supplementary Submission)
160	Mr Barry Wakelin MP Federal Member for Grey (Supplementary Submission)
161	Dr Amy McGrath OAM Convenor H S Chapman Society Inc.
162	Liberal Party of Australia
163	Australian Labor Party
164	Dr Amy McGrath OAM Convenor H S Chapman Society Inc. (Supplementary Submission)

<b>Submission No.</b>	<b>Individual/Organisation</b>
165	Mr Peter Cork
166	Mr Tony Lawler MP, B. Pharm. Federal Member for Parkes
167	Mrs E Farear
169	Mr Joe Pilarcik
170	Patriotic Movement of Australia
171	Mr Maurice Horsburgh
172	Pauline Hanson's One Nation South Australian Division
173	The Australian Family Party
174	Mr Jay Knoss
175	Mr Bruce Ingle
176	Australian Electoral Commission (Supplementary Submission)
177	Mr Graham Smith
179	Mr Angus Belford
180	Hon Tony Abbott MP Minister for Employment Services Federal Member for Warringah
181	Justice Action
182	Mr Rex Hore
183	Australian Labor Party Adamstown Branch
184	Liberal Party of Australia Kalgoorlie North Division
185	Mr Allan Viney Convenor Scrutineers for Honest Elections
186	Mr Ted Briggs
187	Mr Charles Turner
188	Mr Ken Lawson
189	Mr Lex Martin



---

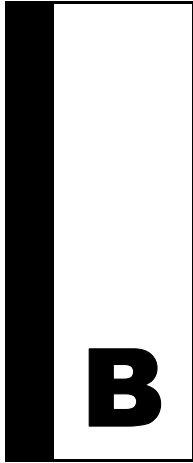
<b>Submission No.</b>	<b>Individual/Organisation</b>
190	Ms Edith Knight
191	Mr Matthew Coffey
192	C Thomas
193	Mr Mohammad Ali Maleki
194	Northern Territory Country Liberal Party (Supplementary Submission)
195	Mr Peter Carroll-Held
196	Mr Jonathan Polke
197	Mr Ted Briggs (Supplementary Submission)
198	Ms Norma Jamieson
199	Australian Democrats ACT Division
200	Ms Ann Fiske
201	Northern Territory Country Liberal Party (Supplementary Submission)
202	Mr Phillip Barresi MP Federal Member for Deakin
203	F S Salter
204	Mr Raphael Mills
205	Mrs Margaret Woolnough
206	Liberal Party of Australia (Supplementary Submission)
207	Australian Democrats
208	Tangentyere Council
209	Mr Mike Bowden Manager, Community Development Tangentyere Council
210	Australian Electoral Commission (Supplementary Submission)
211	Voters Against Legal Unfair Elections (Supplementary Submission)

<b>Submission No.</b>	<b>Individual/Organisation</b>
212	Office of the Leader of Pauline Hanson's One Nation Party, Queensland Parliament (Supplementary Submission)
213	Mr Jim Stewart (Supplementary Submission)
214	Voters Against Legal Unfair Elections (Supplementary Submission)
215	Mr Arthur Hine (Supplementary Submission)
216	Senator John Watson Senator for Tasmania
217	Mr Bill Hoffman
218	Tangentyere Council (Supplementary Submission)
219	Voters Against Legal Unfair Elections (Supplementary Submission)
220	Mr Arthur Tuck (Supplementary Submission)
221	Mr James Dwyer (Supplementary Submission)
222	D G Haddrell
223	Voters Against Legal Unfair Elections (Supplementary Submission)
224	Mr Jim Stewart (Supplementary Submission)
225	Mr Jim Stewart (Supplementary Submission)
226	B Evans
227	Mr J M Moller (Supplementary Submission)
228	Mr David Marshall and Mr David Willis (Supplementary Submission)
229	The Hon Warren Snowdon MP Member for the Northern Territory

---

<b>Submission No.</b>	<b>Individual/Organisation</b>
230	Voters Against Legal Unfair Elections (Supplementary Submission)
231	Mr Antony Green (Supplementary Submission)
232	Australian Electoral Commission (Supplementary Submission)
233	Northern Territory Country Liberal Party (Supplementary Submission)
234	Mr Barry Wakelin MP Federal Member for Grey (Supplementary Submission)
235	Mr Lindsay Johnson (Supplementary Submission)
236	Mr David Cox MP Federal Member for Kingston
237	Voters Against Legal Unfair Elections (Supplementary Submission)
238	Australian Electoral Commission (Supplementary Submission)
239	Australian Electoral Commission (Supplementary Submission)
240	Mr Lindsay Johnson (Supplementary Submission)
241	Mmme B J Ward
242	Voters Against Legal Unfair Elections (Supplementary Submission)
243	Australian Electoral Commission (Supplementary Submission)
244	Mr Bernie Masters MLA Member for Vasse, WA
245	Australian Electoral Commission (Supplementary Submission)

<b>Submission No.</b>	<b>Individual/Organisation</b>
246	Mr J M Moller (Supplementary Submission)
247	Voters Against Legal Unfair Elections (Supplementary Submission)
248	Campbelltown Airport Group Inc.
249	Mr John Button
250	Mr Jim Lloyd MP Federal Member for Robertson (Supplementary Submission)
251	Ms Susan Kennett
252	Mr Mohammed Ali Maleki (Supplementary Submission)
253	Australian Taxation Office
254	Mr Jim Stewart (Supplementary Submission)
255	Australian Labor Party North Woden Sub-branch
256	Mr A E Hall
257	Australian Electoral Commission (Supplementary Submission)
258	Australian Electoral Commission (Supplementary Submission)
259	Mr Lindsay Johnson (Supplementary Submission)
260	Mr Harry Evans Clerk of the Senate
261	Dr Amy McGrath OAM Convenor H S Chapman Society Inc. (Supplementary Submission)



## **Appendix B – List of Letters Submitted**

D J Anning

Ms Fiona & Mr Fraser Anning

H W Anning

Mrs C M Atkinson

Mr John K Baldwin

Mr Craig Balnaves

Mr Kevin Bazley

J Bell

Mr Harold Leslie Bell

Mrs E L Bott

Mrs J Bourke

Ms Michele Boyanton

D Briggs

Mr Dennis Brittle

Mr William Ellis Burdeit

G D Bury

M G Bury

Mr Phillip Lynch & Ms Janine Byrne

Mrs Roseanne M Campbell

A J Carter

I Carter

Mrs Patricia Casson

C A E & P J Child

Mr R Conroy

Mrs D Conroy

C W Cooney

Mr Geoff Coupe

Ms Patricia Courtney

R J De Vere

Dickson

J H Dickson

Mr Barry Duffus

Mrs Arlene Duffus

Ms Margaret Eade

S G Eade

Mr Alan Ellis

Mrs Leslie Feather

Mr Santo Ferraro

R Flaherty

Mr Charles Forbes

Mr John U & Ms Cornelia C Fraser

F L C Geist

T M Greene-McCosker

Mrs Arlene Duffus

A Halfpenny

Ms Beryl Halfpenny

Mr Rodney Halfpenny

T Halfpenny

M K Hamill

W D Hamill

---

Mrs Joan Harlow  
L W Harris  
E B Harrison  
Mr Perry Head  
Mr Raymond Cecil Head  
C L Heckenbere  
Mr Karl & Ms Erna Holtz  
Mr Peter & Ms Ruth Honzatko  
Mr Mike Jameson  
Mrs B Janssen  
A Johnson  
Mrs M Jonats  
Killen  
Mr A W Kinsman  
E C Lake  
Y Lake  
Mr David Levy  
Mrs Nancy Levy  
Mr Phillip, Mr Wal & N M Lynch & M Kelly  
Mr David Maloney  
G Manning  
B H Marbach  
Mr Roy Marbach  
Mr Terrence W & Ms Ine Maria Martin  
Mr Graham Maskell  
A M McClymont  
McClymont  
L V McCosker  
Ms Leila McKay

Mr Ian McKay

R H Norris

G O'Neill

S O'Neill

Mr Ron Owen

Mr E Webb & Mrs V Palmer

Mr F H Pauler

Ms Catherine Payne

J Payne

Ms Beryl J Piggott

R K Piggott

Mr Ross Rubie

J Rutherford

Mr David A Salinson

Mr David Salinson

J N Seeney

E A Selleck

Mr Hugh Selleck

Captain Edward Shaw MNI JP

Mr Thomas John Shemlowski

Mrs Y Shemlowski

Ms Ethel Shippen

Mr Kevin Smith

Mr Wal Smith

Mr Dudley P Solomon

Mr Andrew Stenton

Mr Costa Thomas

Ms Jenny Trewin

Mr Anton Vonk



A M Warner

Warner

Mr Eric Wellington

Wharton

Wharton

Wharton

A R Wharton

A R Wharton

J M Wharton

Mrs Val Wicks

G F Wicks

B B Williamson

Ms Gwen Williamson

Mr Terry Worthing

A & D M Zafir

In addition to the above 5 letters with unreadable names were received.

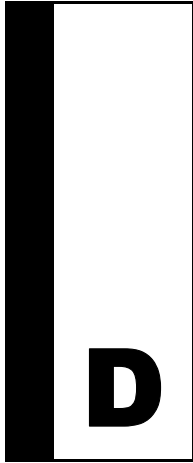




## **Appendix C – List of Exhibits**

<b>Exhibit Number</b>	<b>Description</b>
1	<i>A submission to the select Committee on the Report of the Review of Governance of the Australian Capital Territory regarding Aboriginal and Torres Strait Islander representation in the Legislative Assembly of the Australian Capital Territory. 29p. Leftwich, F and Bell, W. December 1998. Provided by Mr Fred Leftwich and Mr Wally Bell, Chairperson on behalf of Ngunawal ACT and District Aboriginal Council of Elders.</i>
2	20 documents tendered in support of submission no. 189. Provided by Mr Lex Martin, Australian Greens Senate candidate, Northern Territory 1998 federal election.
3	17 documents tendered in support of submission no. 191. Provided by Mr Matthew Coffey.
4	<i>Electoral Amendment Bill 1999 (Queensland). 8 p. Provided by Mr Ian Petersen, Senior Advisor, Office of the Leader of Pauline Hanson's One Nation Party Queensland Branch.</i>
5	<i>Submission to the Joint Standing Committee on Electoral Matters in relation to the electoral result for the federal division of Dickson. 40p</i> The Enterprise Council. December 1993 Provided by Mr Arthur Tuck.
6	<i>How to Vote for Neither!</i> Brochure provided by Mr Jim Stewart.





## **Appendix D – List of Hearings and Witnesses**

**Tuesday, 23 March 1999 - Canberra**

Mr Robert McClelland MP, Federal Member for Barton, Shadow Attorney-General

Mr Barry Wakelin MP, Federal Member for Grey

**Thursday, 1 April 1999 - Canberra**

**Australian Electoral Commission**

Mr Andrew Kingsley Becker, Deputy Electoral Commissioner

Mr Mark Ernest Cunliffe, First Assistant Electoral Commissioner,  
Finance and Support Services

Mr Paul Dacey, Assistant Commissioner, Elections and Enrolment

Mr Bill Gray, Australian Electoral Commissioner

Mr Brien James Hallett, Director, Information

Ms Frances Mary Howat, Australian Electoral Officer for New South  
Wales

Mr Robert Lance Longland, Australian Electoral Officer for  
Queensland

**Australian Labor Party**

Mr Simon Banks, Principal Legal Adviser, Senior Adviser to the  
Shadow Attorney-General

Mr Gary Gray, National Secretary

**Tuesday, 11 May 1999 - Canberra**

Mr James Eric Lloyd MP, Federal Member for Robertson

Mr Alan Agapitos Morris MP, Federal Member for Newcastle

**Friday, 14 May 1999 - Canberra**

Mr Brian Field Cox

Mr Neil Eric Gillespie and Mr Fred Leftwich

Dr Amy McGrath OAM, Convenor, HS Chapman Society Inc.

**Friday, 21 May 1999 - Darwin**

Mr Matthew Martin Coffey

Mr Lex Stephen Martin

**Northern Territory Country Liberal Party**

Ms Suzanne Patricia Cavanagh, President

Ms Jennifer Jane Sinclair, Party Scrutineer

Mr Charles Edward Taylor, General Secretary

Hon Warren Snowdon MP, Member for Northern Territory

**Tuesday, 22 June 1999 - Canberra**

**Liberal Party of Australia**

Mr Lynton Keith Crosby, Federal Director

**Tuesday, 29 June 1999 - Canberra**

**Australian Electoral Commission**

Mr Kerry Michael Heisner, Australian Electoral Officer for the Northern Territory

Senator the Hon Grant Ernest John Tambling, Senator for the Northern Territory

**Monday, 16 August 1999 – Alice Springs**

**Australian Electoral Commission**

Mr Brian Joseph Beath, Divisional Returning Officer, Division of Brisbane

**Tangentyere Council**

Mr Michael John Bowden, Manager, Community Development

Mr Terrence John Lewis, Media Liaison and Public Relations Officer

Mr Geoffrey Shaw, President

Mr William Roy Tilmouth, Executive Director

**Ms Elna Venetta Williams**

**Tuesday, 17 August 1999 – Brisbane**

**Mr James Francis Dwyer**

**Mr John Richard Hugo**

**Mr Lindsay Barry Johnson and Mr James Edgar Stewart**

**Patriotic Movement of Australia**

Mr Brian Patrick McDermott, Secretary

**Pauline Hanson's One Nation Party**

Mr Ian Thomas Petersen, Senior Adviser, Queensland Parliamentary Team

**Mr Arthur John Tuck**

**Voters Against Legal Unfair Elections**

Mr Graham Brunckhorst, Chairman, and Mr Mark Leslie Chapman Smith

**Tuesday, 24 August 1999 – Canberra**

**Australian Democrats**

Senator Andrew Bartlett, Senator for Queensland

**Tuesday, 21 September 1999 – Canberra**

**Mr Antony Green**

**Tuesday, 19 October 1999 – Canberra**

**Australian Electoral Commission**

Mr Mark Ernest Cunliffe, First Assistant Electoral Commissioner, Finance and Support Services

Mr Paul Dacey, Assistant Commissioner, Elections and Enrolment

Mr Bill Gray, Australian Electoral Commissioner

Mr Brien James Hallett, Director, Information

Mr Robert Lance Longland, Australian Electoral Commission Officer for Queensland