

Election Day and the Scrutiny

- 5.1 Election day is the culmination of an intense period of activity by political parties, candidates and the AEC. On election day 2001, over 11.25 million voters attended 7,703 booths, presided over by over 65,000 AEC officials. The largest polling booth was at Wodonga (in the Division of Indi, Victoria), which issued 7,746 votes on election day, including ordinary, absent and provisional votes.¹ The largest 'super booth'² was in Sydney, where a total of 8,338 ordinary and declaration votes were issued. The smallest polling booth was at Perisher Valley (in the Division of Eden Monaro, New South Wales), which issued a total of 30 votes, including ordinary and declaration votes. The Sydney pre-poll voting centre (in the Division of Sydney, New South Wales) issued the largest number of pre-poll votes, while the Division of Maranoa in Queensland handled the largest number of postal votes.³ Counting of votes on election night concluded when the last vote was entered into the AEC's counting system at approximately 1:30am on Sunday, 11 November 2001.⁴

1 AEC, *Behind the Scenes: the 2001 Election Report*, Commonwealth of Australia, 2002, at: http://www.aec.gov.au/_content/when/past/2001/bts/index.htm, accessed 21 May 2003.

2 The term 'super booth' refers to the situation where a number of normal polling booths for different Divisions are located in the one polling place. Usually, these are located in polling places where you would expect a large number of absentee votes for other Divisions, for example, Sydney Town Hall. AEC correspondence to the Committee secretariat, June 2003.

3 Correspondence from AEC to the Committee secretariat, June 2003.

4 Correspondence from AEC to the Committee secretariat, 2 June 2003.

Commiserations and congratulations continued around Australia for some time afterward.

- 5.2 This chapter is concerned with the issues surrounding the operation of polling booths on election day, the process by which votes are counted and the transmission of results.

Polling booth administration

- 5.3 Submissions concerning polling booth administration made by polling booth officials, political parties and other stakeholders are outlined below, followed by the AEC's response.⁵

Enrolment detail verification

- 5.4 On polling day, AEC officials ask each prospective voter the following questions:
- What is your full name?
 - Where do you live?
 - Have you voted before in this election?⁶
- 5.5 If the elector provides a name and address matching that on the certified list, and their name is not already marked off, they are entitled to cast an ordinary vote. If the address given does not match that on the roll, or cannot be found on the certified list for that Division, the elector is requested to make a declaration vote – an absentee vote if they are correctly enrolled in a Division other than the one the polling place is located in, a pre-poll vote if they are enrolled in another State, or a provisional vote if their name cannot be found on the certified list, is marked off as already having voted, or their address is not on the certified list (because they are a silent voter, an overseas elector or an itinerant elector).⁷

5 Submissions (Mr G Wynn, no. 36, Mr G Field, no. 126, Mr P Ballard, no. 151, Liberal Party of Australia, no. 149, the Greens, NSW no. 158, AEC, nos. 147, 174, 181, 186 and 190).

6 AEC, *What happens at a polling place?* At: http://www.aec.gov.au/_content/what/voting/polling.htm#proc, accessed 19 May 2003.

7 AEC, *What happens at a polling place?* At: http://www.aec.gov.au/_content/what/voting/polling.htm#proc, accessed 19 May 2003.

- 5.6 Two polling officials made suggested changes to the way in which a voter's entitlement is checked.⁸ The submissions suggested:
- establishing an AEC hotline for polling officials to clarify voters' correct enrolment details;
 - installing laptop computers in each polling place, allowing polling officials to check voters' details and enter enrolment amendments online;
 - installing swipe machines to check voters' details and automatically mark names off the Electoral Roll; or
 - the AEC sending voters all the 'applicable forms' in a secure envelope prior to polling day.⁹
- 5.7 The AEC responded that the proposed hotline would slow down the voting process without significantly enhancing the voting franchise. Queries could lead to polling staff becoming involved in arguments about a person's eligibility to be enrolled. The installation of laptop computers or swipe machines to check enrolment would present cost and infrastructure problems. The proposal to post electors 'all applicable forms' was deemed by the AEC to 'have all the costs of a postal ballot coupled with the inconvenience of an attendance ballot'.¹⁰
- 5.8 The Committee was interested in the rate of rejection of absent votes.¹¹
- 5.9 The AEC provided statistics on absent votes at the 2001 federal election, as per table 5.1.

Table 5.1 Treatment of absent votes cast at 2001 federal election

Action	Number (approximate)	Per cent
Admitted	753 000	88
Wholly rejected	68 000	8
Senate vote counted only*	31 000	4
Total	852 000	100

Source AEC submission no. 174, p. 22.

8 Submissions (Mr G Field, no. 126, and P. Ballard, no. 151).

9 Submissions (Mr G Field, no. 126, and P Ballard, no. 151).

10 Submission (AEC, no. 174), pp. 22-24 and 43-44.

11 Transcript of Evidence 9 December 2002 (Senator R Ray), p. EM309.

Note * Where electors have voted for a Division in which they are not enrolled, but within the State in which they are enrolled, only their Senate votes are counted.

- 5.10 The substantial majority (88 per cent) of absent votes were admitted to the count for both the House of Representatives and the Senate.
- 5.11 The AEC stated that declaration votes (including absent votes) may be rejected because of elector error (such as not being correctly enrolled at the close of rolls), or polling official error. The AEC identified the four main 'polling official managed actions' which lead to the rejection of declaration votes:
- the elector does not sign the declaration;
 - the elector's Division is incorrectly identified;
 - the enrolled address is incorrectly identified; and
 - the ballot paper for the wrong Division is issued.¹²
- 5.12 The AEC asserted that training of staff who issue declaration votes focuses on these four issues, noting that:
- training materials and documentation were revised for the 2001 federal election, and their effectiveness is currently being reviewed.¹³
- 5.13 The Committee asked AEC officials whether they had considered compiling a list of 'the hundred biggest absentee [polling] booths in Australia', and introducing computers at these booths to provide access to roll details for the purposes of verification.¹⁴ The Deputy Electoral Commissioner, Mr Paul Dacey responded:
- Yes, we have. In fact a couple of the state electoral commissions have in their last state elections used similar procedures, particularly in town hall type voting centres, and it has worked particularly well. It is something that we are going to pursue and are looking at perhaps piloting in a couple of very large ones such as Sydney and Melbourne town halls. It is something we want to pursue.¹⁵

12 Submission (AEC, no. 181), p. 10.

13 Submission (AEC, no. 181), p. 10.

14 Transcript of Evidence 9 December 2002 (Senator R Ray), p. EM 309.

15 Transcript of Evidence 9 December 2002 (Mr P Dacey), p. EM 309.

- 5.14 The AEC subsequently acknowledged that such procedures were practiced successfully by some State Electoral Commissions. However, the AEC identified a number of potential problems:
- the cost of the required information technology;
 - the number of certified lists required in each polling place;
 - the need for more polling officials to minimise delays resulting from the additional steps in the process; and
 - security issues (the AEC asserted that the technology and the CDs containing the certified lists for a State or Territory would be ‘attractive to thieves’).¹⁶
- 5.15 The AEC concluded that the Committee’s suggestion was ‘potentially beneficial’, and canvassed the need for further research and analysis. This would include, for example, an in-depth examination of the processes which lead to the rejection of an absent vote. The AEC also noted that it would review the Victorian Electoral Commission’s practice at its last election of issuing of absent votes by laptop ‘following completion of their evaluation’.¹⁷

Recommendation 18

- 5.16 **The Committee recommends that at the next federal election, the AEC conduct a pilot scheme using computers at the ten polling booths which had the largest number of absentee votes at the 2001 federal election, in order to provide electronic or on-line access to the Certified List for the purpose of verifying the enrolment details of those voters seeking to make an absent vote.**

Polling staff pay and training

- 5.17 Submissions from two polling booth officials raised the issues of remuneration, training, and working conditions for polling booth staff, in particular:
- a dissatisfaction with the temporary staff remuneration for their work on election day;

16 Submission (AEC, no. 181), pp. 10-11.

17 Submission (AEC, no. 181), pp. 10-11.

- a suggestion that the AEC supply t-shirts to its polling officials so that voters can clearly identify AEC officials (the AEC provided shirts to some temporary staff at the 1999 Republic Referendum);
- a suggestion that the work of staff should be rewarded through staff recognition awards;
- a suggestion that AEC training should focus more on customer service and privacy issues; and
- a suggestion that AEC training should make more use of computer technology.¹⁸

5.18 The AEC responded that current remuneration and training arrangements for polling staff are appropriate. The AEC calculated that providing t-shirts to over 60,000 polling day staff would cost around \$900,000 which was not warranted. Some computer-based training was used for the 2001 federal election, and the AEC stated that it is examining the further use of computer-based training for elections.¹⁹

General polling booth administration

- 5.19 More general issues in relation to administration of polling booths included:
- concerns about the adequacy of the supply of election materials such as 'change of enrolment details' forms and stationery;
 - concerns about irregular numbers of papers in bundles of Senate ballot papers (bundles are supposed to number 100 ballot papers);
 - a call for two queue controllers at each polling booth, to help control large numbers of electors;
 - a suggestion to number polling booth tables so that the queue controller may direct people more efficiently; and
 - concerns about the adequacy of advertising the location of polling booths, particularly new booths; and
 - a suggestion that the AEC write directly to all electors to inform them of the location of polling booths in their area.²⁰

18 Submissions (Mr G Field, no. 126; Mr P Ballard, no. 151).

19 Submission (AEC, no. 174), p. 23.

20 Submissions (Mr P Ballard, no. 151; Mr G Wynn, no. 30; Ms Ruth Gibbs, no.140).

- 5.20 The AEC responded to these concerns in its submissions.²¹
- 5.21 The Committee asked the AEC whether it had formal mechanisms for polling officials to provide feedback to the AEC on the conduct of elections.²²
- 5.22 The AEC advised that it conducted ‘debriefing sessions’ as part of its reviewing process.²³ The AEC sends a survey to all Officers in Charge (OICs) and a random sample of other polling officials ‘who receive training under the training of polling staff package’.²⁴ The surveys invite feedback on training, procedures and materials. They are analysed by the Elections Systems and Policy Section of the AEC. The AEC advised that:
- a number of polling official suggestions have, over the years, been incorporated in refinements to the OIC’s Procedures Manual.²⁵

Committee comment

- 5.23 The Committee draws the AEC’s attention to the concerns raised in relation to the administration of polling booths, and expects the AEC to take these concerns into account in its future planning of election day administration.

Recommendation 19

- 5.24 **The Committee recommends that the AEC review the evidence to this inquiry regarding polling booth administration, and take account of it in its future planning for election day administration and staff training.**

Access to polling places

- 5.25 Two issues regarding access to polling booths arose in the course of the inquiry:
- Changes were suggested to the number or location of entrances to polling booths. This causes difficulties for candidates when organising workers to staff entrances and hand out how-to-vote

21 Submissions (AEC, nos. 174 and 181).

22 Transcript of Evidence 9 December 2002 (Senator B Mason) p. EM311.

23 Transcript of Evidence 9 December 2002 (Mr P Dacey), p. EM311.

24 Submission (AEC, no. 181), p. 8.

25 Submission (AEC, no. 181), p. 8.

cards. It was recommended that the number of entrances be fixed by the DRO prior to each election, with candidates notified of these details prior to polling day.²⁶

- Complaints were made in relation to wheelchair access to polling places.²⁷ The AEC reported that the Human Rights and Equal Opportunity Commission (HREOC) had received two such complaints for the 2001 federal election.²⁸

5.26 The AEC advised that determining the location and number of entrance gates at polling booths was 'problematic' and that the determination of which gates were opened was 'little more than a matter of chance'. The AEC argued that:

Any advice received by the AEC in this regard could be nullified on polling day as a result of last minute decisions (or oversight) by the owners of the venues concerned.²⁹

5.27 The Committee queried why there was no clear definition of which gates will be open at particular polling places, 'despite the fact that those polling places have been in use for 100 years'.³⁰ The AEC conceded that there was no 'centralised procedural decision making that determines which gates might be open'. The AEC stated that what was involved was 'an individual premise-by-premise decision', and acknowledged that the issue would be given further consideration and brought out in polling staff training.³¹

5.28 Regarding wheelchair access to polling places, the AEC responded that this had improved over time:

At the 1993 election, 40% of polling places had full or partial wheelchair access. This had increased to approximately 75% for the 2001 election.³²

5.29 The AEC stated that while more suitable buildings are often identified, they are not available at the short notice given to them when elections are called.³³

26 Submission (The Greens NSW, no. 158), p. 3.

27 Submission (AEC, no. 147), p. 25.

28 Submission (AEC, no. 147), pp. 25-26. A further 40 complaints 'of an access nature' were made to the AEC directly either immediately prior to, or just after, polling day.

29 Submission (AEC no. 174), p. 48

30 Transcript of Evidence 9 December 2002 (Mr P Georgiou MP), p. EM315.

31 Transcript of Evidence 9 December 2002 (Mr P Dacey), p. EM315.

32 Submission (AEC no. 147), p. 26.

33 Submission (AEC no. 147), p. 26.

Recommendation 20

- 5.30 **The Committee recommends that the AEC do more in its planning stages to improve access to polling places. The Committee also recommends that more effort be made with respect to determining the number and location of entrances at each polling place.**

Adjournment of polling

- 5.31 Section 241 of the Electoral Act stipulates that polling may be adjourned to another day if it is interrupted by:
- riot or open violence; or
 - storm, tempest, flood or an occurrence of like kind.
- 5.32 The AEC submitted that the section does not allow for an adjournment of polling on the basis of a bomb threat, health hazard (for example, an anthrax scare or dangerous animal), fire, or fire alarms or sprinklers being set off.
- 5.33 The AEC is also concerned that section 241 does not allow for a temporary suspension of polling, ‘even though resumption on the same day might be a practical approach’.³⁴
- 5.34 The AEC recommended that the Electoral Act be amended:
- to allow for the adjournment or temporary suspension of polling where polling is incapable of being continued for physical and safety reasons.³⁵

Committee comment

- 5.35 The Committee accepts the appropriateness of the AEC’s concern and recommends that adjournment or suspension be permitted where polling cannot be continued for safety reasons, noting that suspension does not involve adjournment to a later day.

34 Submission (AEC, no. 147), p. 27.

35 Submission (AEC, no. 147), p. 27.

Recommendation 21

- 5.36 **The Committee recommends that the *Commonwealth Electoral Act 1918* be amended to allow for the adjournment or temporary suspension of polling where polling is incapable of being continued for physical and safety reasons.**

Electioneering at or near polling places

- 5.37 Several submissions raised issues about electioneering at polling places. These included:
- a suggestion that all political advertising be restricted to within 100 metres from the entrance of a polling booth;³⁶
 - a suggestion that the AEC promulgate a code of conduct for party workers at polling places to be signed by all workers;³⁷
 - concern about rubbish created by political banners; and
 - a recommendation that a bond be imposed on parties wishing to display advertising material on polling day, with the bond repaid only if all advertising material is removed the following day.³⁸

Committee comment

- 5.38 The Committee shares submitters' concerns that political advertising may result in rubbish scattered across public places following polling day. The Committee does not consider a bond on parties or candidates wishing to display advertising material to be an appropriate response to this issue.³⁹
- 5.39 It is the responsibility of parties and candidates displaying advertising material to ensure it is cleared away. The display of posters and the like, and litter in public places, come under the jurisdiction of local government. Local government authorities should sanction candidates and parties failing to clear away election material within a reasonable time after the conclusion of polling.

36 Submission (Mr I Bowie, no. 67), p. 3

37 Submission (Mr I Bowie, no. 67), p. 3. See also Submission (AEC, no.199) p. 7.

38 Submissions (Mr I Bowie, no. 67; Mr V Lawther, no. 163).

39 See submission (AEC, no. 199), pp.6-7 for further comment on the administrative implications of such a scheme.

Loudspeakers

5.40 The Liberal Party of Australia raised the issue of political parties using loudspeakers for electioneering on polling day. Section 340 of the Electoral Act provides that:

(1) The following acts are, on polling day, and on all days to which the polling is adjourned, prohibited at an entrance of or within a polling booth, or in any public or private place within 6 metres of an entrance of a polling booth, namely:

- (a) canvassing for votes; or
- (b) soliciting the vote of any elector; or
- (c) inducing any elector not to vote for any particular candidate; or
- (d) inducing any elector not to vote at the election; or
- (e) exhibiting any notice or sign (other than an official notice) relating to the election.

Penalty: \$500.

(2) Where:

- (a) a building used as a polling booth is situated in grounds within an enclosure; and
- (b) the appropriate Divisional Returning Officer causes to be displayed throughout the hours of polling at each entrance to those grounds a notice signed by the Divisional Returning Officer stating that those grounds are, for the purposes of subsection (1), part of the polling booth;

those grounds shall, for the purposes of that subsection, be deemed to be part of the polling booth.

5.41 The Liberal Party's concern was that broadcasting electoral material by loudspeaker at polling booths could breach the spirit of the Electoral Act, as well as the letter of that law. The Liberal Party recommended that this issue be addressed.⁴⁰

5.42 The AEC noted that 'while the speakers themselves would be outside the six metre limit, their messages would be heard within the limit.'⁴¹ The Committee noted that 'it is hard enough handing out how-to-vote cards without listening to political messages all day'.⁴²

40 Submission (Liberal Party of Australia, no. 149), p. 6.

41 Submission (AEC, no. 174), p. 42.

42 Transcript of Evidence 16 August 2002 (Senator R Ray), p. EM89.

- 5.43 The AEC agreed that this could be ‘in breach of the spirit of the Act’. Its legal advice was that the broadcasting of electoral material at polling places was unlikely to be a breach of the Act unless the source of the broadcast was within the six metre limit.⁴³
- 5.44 The AEC noted that the Electoral Act could be amended so as to make excessive noise (including political broadcasts) at polling booths illegal, but such amendments might raise the issue of the implied right to political communication in the Australian Constitution.⁴⁴
- 5.45 The legal advice from the Office of General Counsel suggested that regulating noise could best be achieved by:
- inserting a new provision into the Act prohibiting excessive noise (including political broadcasting); and
 - restricting the application of the new provision to particular means of communication and the content of the communication.⁴⁵
- 5.46 The legal advice obtained by the AEC also noted that to comply with general principles of freedom of political communication, the provision would have to:
- be limited to a defined time period (say 8am to 6pm on polling day);
 - be confined to prescribed places (polling places);
 - define the limit to which the ‘electioneering’ activity may extend beyond the six metre boundary around the polling place; and
 - consider the scope of the power of authorised officers to regulate this sort of activity beyond pre-existing definitions of polling booths and polling places.⁴⁶

Committee comment

- 5.47 The Committee recommends that, in keeping with the spirit of section 340 of the Electoral Act, the AEC draft amendments to prevent the broadcast of political material which is clearly audible within the six metres surrounding the polling place.

43 Submission (AEC, no. 174), p. 42.

44 Submission (AEC, no. 190), p. 9.

45 For example, the provision could proscribe the use of electronic (or any broadcasting) devices used to broadcast electoral matter.

46 Submission (AEC, no. 190), p. 9

Recommendation 22

- 5.48 **The Committee recommends that subject to advice from the AEC, section 340 of the *Commonwealth Electoral Act 1918* be amended so as to prohibit the broadcast of political material which is clearly audible within the six metres surrounding a polling place on election day.**

Dispute resolution on polling day

- 5.49 Disputes about a variety of issues, such as polling booth dressing, how-to-vote cards, and noise, are commonplace on election day. The Liberal Party's submission raised the issue of the powers of polling booth presiding officers where political parties distribute misleading material, such as how-to-vote cards, at polling places.⁴⁷ This generated wider discussion at public hearings about the current processes for resolving disputes which arise on polling day.⁴⁸ These issues are discussed below.

Powers of presiding officers

- 5.50 The Liberal Party submission reported an incident at the 2001 federal election in the Division of Petrie (Queensland) where how-to-vote cards issued by the Australian Democrats incorrectly identified the Greens candidate as an Independent. The card was brought to the attention of the Australian Electoral Officer (AEO), who requested that the Democrats stop distributing the card. The Liberal Party alleged that despite this, the card continued to be distributed. When Liberal Party workers approached polling booth officials in that Division, they were apparently told that polling officials:

had no power to demand that Democrat workers cease distributing these how-to-vote cards.⁴⁹

- 5.51 The Liberal Party's submission attested that this was then confirmed by the AEO.

- 5.52 The powers of presiding officers (also known as Officers in Charge [OICs]) are stipulated in the Electoral Act and the *Polling Place Management Procedures Manual*.⁵⁰

47 Submission (Liberal Party of Australia, no. 149), p. 2.

48 See Transcripts of Evidence 16 August 2002, p. EM94; and 9 December 2002, p. EM294.

49 Submission (Liberal Party of Australia, no. 149), p. 2.

50 Submission (AEC, no. 174), pp. 35-36.

5.53 On polling day, the presiding officer establishes the perimeters of the polling booth. Section 340 of the Electoral Act stipulates that a 'polling booth' is taken to include the physical building in which polling is to take place, and the enclosed grounds in which the building is located. Section 340 also stipulates that no canvassing for votes is allowed within six metres of the polling booth.⁵¹ Within the polling booth, the presiding officer has the power to authorise a police officer or another person to remove anyone who:

- commits misconduct in the premises;
- disobeys a lawful direction given by the presiding officer; or
- enters or remains in such premises without the permission of the presiding officer.⁵²

5.54 Outside the six metre limit, the powers of presiding officers are limited:

- polling may be adjourned by the presiding officer because of riot, open violence, storm, tempest, flood or other similar event; and
- with regard to disturbances, the *Polling Place Management Procedures Manual* advises presiding officers that in the first instance they should attempt to resolve disturbances using common sense. If the issue cannot be resolved using common sense, the presiding officer is directed to contact the DRO.⁵³

5.55 The AEC submitted that its understanding of the situation which occurred in Petrie was that:

at one polling place (Bald Hills) Liberal booth workers may have got the message before the Democrat booth workers, so they went to the OIC to ask for action. The AEO for Queensland then contacted the Democrats State Secretary again and received confirmation that she had sent out new cards and that she would contact Democrat workers to ensure they understood which HTV cards were to be used. The OIC of Bald Hills was then informed by the DRO that the Democrats were in the process of replacing the HTV cards.⁵⁴

51 *Commonwealth Electoral Act 1918*, section 340.

52 *Commonwealth Electoral Act 1918*, section 348.

53 Submission (AEC, no. 181), p. 28.

54 Submission (AEC no. 174), p. 35.

- 5.56 The AEC's position was that 'once a decision had been made about the accuracy of the how-to-vote card and the relevant parties informed, [the responsible] party began to withdraw the how-to-vote card'.⁵⁵
- 5.57 This dispute over how-to-vote cards led the Liberal Party to call for presiding officers' powers to be extended to 'every element of the conduct of an election', including power to ensure that the distribution of material at the polling booth is in accordance with the Act.⁵⁶ If this was not agreed to, Mr Lynton Crosby (then Federal Director of the Liberal Party) argued, there should be a standard process in place for dealing with complaints about breaches of the Act on polling day.⁵⁷
- 5.58 The AEC indicated that it would continue to resist the recommendation that presiding officers be given more power. The Deputy Electoral Commissioner, Mr Paul Dacey, stated:
- if we have 8,000 officers in charge, who receive very minimal training, making decisions based on allegations and accusations I would be quite concerned that some of those decisions may not be correct. It is important that we have consistent standards in decisions.⁵⁸

Dispute resolution procedures

- 5.59 The Liberal Party submission prompted discussion about the provisions under the Electoral Act for resolving disputes on polling day.
- 5.60 In the first instance, the AEC advises its polling place presiding officers to attempt to resolve disputes 'using common sense'. If this fails, the presiding officers should refer the matter to the DRO. Once a DRO (or higher official at the AEC's State or Head Office) has made a decision regarding a dispute, this is communicated back to the polling place presiding officer (for example, to request that a party stop handing out incorrect how-to-vote cards). The AEC advises its staff against physically attempting to enforce a decision, as this may lead to a violent situation.⁵⁹

55 Submission (AEC no. 181), p. 28.

56 Transcript of Evidence 16 August 2002 (Mr L Crosby), p. EM93.

57 Transcript of Evidence 16 August 2002 (Mr L Crosby), p. EM93..

58 Transcript of Evidence 9 December 2002 (Mr P Dacey), p. EM293.

59 Transcript of Evidence 9 December 2002 (Mr P Dacey and Mr A Becker), pp. EM 292-295.

- 5.61 There are further legal avenues available to the AEC and candidates to stop the distribution of material that is in breach of the Electoral Act.
- Complex decisions on whether campaign material is in breach of the Electoral Act are referred to the Director of Public Prosecutions (DPP) for preliminary advice as to whether the material is in breach.
 - If the DPP advises that the material is legal, this advice is passed to DROs and presiding officers.
 - If the DPP advises that the material could be in breach of the Act, this advice is, in the first instance, passed onto the relevant political party, which usually agrees to withdraw the material. OICs may also be advised by the AEC to ask party workers to stop distribution (after authorisation from the party concerned).
 - If the offending material is not removed, the AEC, or individual candidates may seek an injunction from the Federal Court to prevent the distribution of the material (section 383 of the Electoral Act).
 - Once a Federal Court decision has been made, police may be called in to enforce the decision.⁶⁰
- 5.62 The Liberal Party suggested that once a decision on a dispute had been made by the OIC or DRO, this should be binding, with parties disagreeing with the decision having the right to seek injunctive relief.⁶¹ This would mean that instead of the current situation in which the onus for seeking Federal Court injunctions rests on the AEC or on other candidates making a complaint, the person or party allegedly in breach of the Act would have to seek an injunction to override the AEC's decision.
- 5.63 At the Committee's request, the AEC obtained legal advice regarding this proposal. The advice was that the proposal may be in breach of the Constitution, as it would enable the AEC to make a legally binding decision. Under Chapter III of the Constitution, the power to make legally binding decisions is restricted to the courts.⁶²

60 Submission (AEC, no. 174), pp. 35-37.

61 Transcript of Evidence 16 August 2002 (Senator R Ray and Mr L Crosby), p. EM94.

62 Submission (AEC, no. 186), p. 9.

- 5.64 The AEC identified a proposed legislative alternative: to allow the AEC or a candidate to present the Federal Court with *prima facie* evidence of a breach of the Act (such as preliminary advice from the DPP), and then put the onus on the party handing out the allegedly breach material to establish the contrary. This would differ from the current situation in which the Federal Court requires the AEC or a candidate to *prove* that the actions of the other party constitute a breach of the Act, in order for an injunction to be issued.
- 5.65 The AEC pointed out that this alternative would still involve court action by both parties, and therefore would not resolve the time problems inherent in the current system.⁶³
- 5.66 The AEC also investigated other possible approaches, including:
- inserting a ‘cease and desist’ provision in the Act, which would allow the AEC to issue ‘cease and desist’ orders where particular behaviour was interfering with the administration of an election;
 - speeding up the referral of allegedly breach material to the Federal Court, by no longer alerting the political party to the DPP’s preliminary advice, and thereby removing the opportunity to stop distribution prior to court action; and
 - seeking advice on disputed material from the Australian Government Solicitor (AGS), rather than the DPP, which may speed up Federal Court action as the AGS, which represents the Government in court proceedings, would already have the relevant information.⁶⁴
- 5.67 Problems with each of the above approaches were highlighted by the AEC: they would change the role of the AEC from administration to enforcement; remove the opportunity to resolve disputes without going to the Federal Court for a decision; and change the role of the AGS.⁶⁵

Committee comment

- 5.68 The Committee understands the difficulties, as identified by the AEC, in empowering presiding officers to make individual decisions regarding disputes over campaign material. It believes that such

63 Submission (AEC, no. 186), p. 9.

64 Submission (AEC, no. 186), p. 11.

65 Submission (AEC, no. 186), p. 11.

decisions should be referred to the DRO or higher authority as appropriate, as is currently the case.

- 5.69 Advice from DROs and higher authorities regarding the legality of disputed campaign materials should be communicated as quickly as possible to presiding officers, to be passed on to the party/candidate workers involved.

Recommendation 23

- 5.70 **The Committee recommends that the AEC ensure that DRO/AEO decisions regarding disputed campaign materials are communicated as quickly as possible to polling booth presiding officers.**

Presiding officers should be empowered to advise all relevant parties of the DRO/AEO decision regarding disputed materials, and to advise that any continued handing out of materials considered by the AEC to be in breach of the *Commonwealth Electoral Act 1918* may be restrained via Federal Court injunction.

Conduct of the scrutiny and recounts

The scrutiny

- 5.71 Part XVIII of the Electoral Act sets out the provisions for the counting of the vote. This scrutiny process involves first counting the House of Representatives ballot papers and then the Senate ballot papers, as outlined below.

Election night

- Polling officials empty the House of Representatives ballot boxes and unfold the papers.
- The ballots are sorted into first preference votes for each candidate.
- Informal ballots are set aside.
- First preference votes are counted and results rung through to the DRO, along with the number of informal ballot papers. The DRO enters the results onto the AEC's computerised tally system, and

they are transmitted to the National Tally Room and the Virtual Tally Room.

- Polling officials then conduct a two-candidate preferred (TCP) count. This is a distribution of preferences to the two candidates identified by the AEC as being most likely to win each Division (based on historical voting patterns for each seat). The TCP count gives an early indication of who is most likely to win each seat, which is not always clear from first preferences. The TCP candidates are most often – but not always – from the three major parties (the Australian Labor Party, the Liberal Party of Australia or the National Party).
- The results of the TCP are tabulated and rung through to the DRO, for input to the AEC computer network.⁶⁶
- Once the counting of House of Representatives votes on election night is completed, polling officials open the Senate ballot boxes.
- All the ‘above the line’ group ticket votes (see chapter seven for further explanation) are counted and rung through to the DRO. This is all the Senate counting that takes place on election night because Senate results cannot be calculated until the quota for election is known.
- Declaration vote envelopes containing ballot papers for both the House of Representatives and the Senate are sorted and counted, but are not opened.
- Once this preliminary counting for the House of Representatives and the Senate is complete, all the ballot papers and declaration vote envelopes are placed into sealed parcels and delivered to the DRO for further scrutiny.⁶⁷

Further scrutiny

5.72 The initial counting of votes on election night is followed by a ‘fresh scrutiny’, conducted by DROs at Divisional Offices, beginning on the Monday following the election. The ‘fresh scrutiny’ involves:

66 Section 284 of the Electoral Act provides, in effect, that election results may be declared on the basis of the TCP where the two candidates with the highest number of first preference votes could not be displaced from those positions after a full distribution of preferences.

67 AEC, *Behind the Scenes: the 2001 Federal Election Report: Election Night, 2001*, at: http://www.aec.gov.au/_content/when/past/2001/bts/08night.pdf, accessed 6 May 2003.

- Fresh scrutiny of ordinary House of Representatives votes – the DRO examines all ordinary votes, including those deemed to be informal (which may be admitted to the count on the decision of the DRO), and counts the votes.
- Preliminary scrutiny of declaration votes – the DRO conducts a preliminary scrutiny of all declaration vote envelopes to determine whether each vote should be admitted for further scrutiny.
 - ⇒ A postal vote will be accepted for further scrutiny if the DRO is satisfied that:
 - the elector is enrolled (or entitled to be enrolled) for the Division;
 - the signature on the postal vote envelope is genuine and properly witnessed; and
 - the vote was recorded prior to the close of polls.
 - ⇒ Postal votes received up to 13 days after the close of polls will be accepted.
 - ⇒ A pre-poll, absent or provisional vote will be accepted for further scrutiny if the DRO is satisfied that the elector is enrolled (or entitled to be enrolled) for the Division, and that the envelope has been properly signed and witnessed.
 - ⇒ The preliminary scrutiny of postal and pre-poll votes begins on the Monday before polling day. The preliminary scrutiny of absent and provisional votes begins on the Monday after polling day.
- Once a declaration vote envelope is admitted to further scrutiny, the envelope is opened and the ballot paper is taken out, without being unfolded, and then placed in a ballot box and counted in the same way as an ordinary ballot paper.
- Senate ballot papers marked ‘above the line’ are manually counted in the Divisional Office. Computerised vote counting (outlined below) then calculates the quota and the final preference distribution.⁶⁸

68 AEC, *Behind the Scenes: the 2001 Federal Election Report: Scrutiny after Election Night, 2001*; at: http://www.aec.gov.au/_content/when/past/2001/bts/09scrut.pdf, accessed 6 May 2003.

Concerns about the scrutiny

- 5.73 Ms Ruth Gibbs recommended that scrutineers 'be supervised while they supervise the vote counters, [as there may] be an opportunity for fraud at this stage'.⁶⁹
- 5.74 Dr Amy McGrath, representing the HS Chapman Society, alleged that the scrutiny of declaration votes is less than adequate, in that 'declaration votes are never entirely checked; they are only spot-checked'.⁷⁰
- 5.75 The Committee notes that Dr McGrath's views do not accord with the provisions of the Electoral Act, which clearly state that the preliminary scrutiny for declaration votes applies to *all* postal vote applications, *all* postal vote declaration certificates, and *all* other envelopes received by the AEC which contain declaration votes.⁷¹
- 5.76 Under Schedule 3 (items 3 and 3A), it is mandatory that the signature on each postal vote declaration certificate be compared with the signature on the elector's PVA form. The AEC pointed out that while this is the only mandatory signature check, all other forms of declaration voting require the elector's signature to be witnessed by an AEC official.⁷²

Electronic vote counting

- 5.77 According to the AEC, 'Australian authorities have been ... active in the use of technology to assist in the counting of votes'.⁷³ The AEC noted the broad acceptance by all political parties and candidates of the need for an electronic approach, given the considerable time involved in counting votes and allocating preferences under the Senate's system of proportional representation.⁷⁴
- 5.78 In Australia, electronic vote counting has been used in Senate elections and for the upper houses of New South Wales, Western

69 Submission (Ms R Gibbs, no. 140).

70 Transcript of Evidence 2 October 2003 (Dr A McGrath OAM), pp. EM166-172.

71 *Commonwealth Electoral Act 1918*, section 266. See also Schedule 3: 'Rules for the conduct of a preliminary scrutiny of declaration votes'.

72 Submission (AEC, no. 174), p. 32.

73 AEC, *Electronic Voting and Electronic Counting of Votes: A Status Report*, Commonwealth of Australia, March 2001, p. 18. Available at: http://www.aec.gov.au/_content/What/voting/electronic_report/index.htm, accessed 15 June 2003.

74 AEC, *Electronic Voting and Electronic Counting of Votes: A Status Report*, as above, p. 18.

Australia and South Australia⁷⁵ and the ACT experience of the ACT Electoral Commission in conducting this electronic vote count is further discussed in Appendix E.

- 5.79 Electronic vote counting for Senate elections is the result of two recommendations arising out of the inquiry into the conduct of the 1993 federal election.
- 5.80 This process, as stipulated in section 273A of the Electoral Act, involves manual data entry into a stand-alone computer of ballot papers completed in polling places or by postal votes. The ballot papers are retained for the term of the Senators elected.⁷⁶
- 5.81 Once the data entry is complete, the computer application identifies the elected candidates. Scrutineers have access to progressive computer printouts with statistics on surpluses and transfer values and progressive exclusions. This also enables a check that no data has been altered or lost, or new data added.⁷⁷
- 5.82 In its latest status report on electronic voting and vote counting, the AEC envisaged the next step in this process to be a *scan* of ballot papers so that the vote data would be entered into the computer automatically. Based on the US experience, the AEC anticipated that existing technology could be refined to enable hand-written numbers on ballot papers to be accurately read by a scanner.⁷⁸

Concerns about electronic vote counting

- 5.83 Mr John Rogers expressed concern about the computer program used to count votes in the Senate at the 2001 election and in other future ballots.⁷⁹ Mr Rogers presented the view that the computer program employed in the distribution of Senate preferences at the 2001 federal election did not meet appropriate 'Trusted Computing' standards, it was not independently verified by a recognised body, and candidates and the electorate were unclear about its operation.
- 5.84 Mr Rogers suggested that computer programs be written and evaluated to meet the international standards for mission-critical and

75 Elections ACT, *The 2001 ACT Legislative Assembly Election: Electronic Voting and Counting System Review*, ACT Electoral Commission, 2002, p. 15. The ACT also uses electronic vote counting (See Appendix E).

76 Submission (AEC, no. 174), p. 21.

77 Submission (AEC, no. 174), p. 21.

78 AEC, *Electronic Voting and Vote Counting: A Status Report* (2001), as above, p. 18.

79 Submission (Mr J Rogers, no. 106). Mr Rogers advised that he has had extensive information technology experience, in both the private and public sectors.

secure ‘Trusted Computing’. Mr Roger cites four potential problems with electronic vote counting:

- the certainty and accountability of manually counting paper ballots cannot be replaced by electronic counting because candidates, scrutineers and voters must trust the computer’s processing;
- computer programs often fail to function exactly as expected or desired. ‘Bugs’ in the system, for example, appear because of the complexity of a program and the difficulty in communicating the programmer’s needs to the computer;
- while computer programs may be extensively tested, this process will merely highlight anticipated errors. Testing cannot determine the program’s viability under ‘all conditions’; and
- hacking occurs frequently, particularly in networked computers, and therefore any vote outcome is vulnerable to the possibility of such interference.

5.85 Mr Rogers therefore recommended that:

- all vote-counting programs currently used by the AEC be replaced prior to the next federal election;
- new computer programs be written and evaluated according to international standards for mission-critical and secure ‘Trusted Computing’; and
- the full details of the vote counting system be made public, or that a committee of well-known and independent experts certify the appropriateness of the system.⁸⁰

5.86 The AEC submitted that the Computerised Senate Scrutiny System (CSSS) was ‘independently assessed and verified at the time of its deployment and prior to deployment, by the ANAO’. The AEC asserted that it also offered its source code to political parties to analyse and independently verify.⁸¹

5.87 The AEC indicated that the system was being redeveloped to include an ‘Easycount application’. This would enable ‘a range of scrutiny methods to be undertaken electronically’.⁸² The AEC advised that it

80 Submission (Mr J Rogers, no. 106), p. 1. Exhibit 1, tabled at public hearing 20 September 2002.

81 Submission (AEC, no. 174), p. 20.

82 See submission (AEC no. 181), pp. 24-25 for further detail of the redeveloped Easycount application.

intended to seek accreditation of the new system to Australian Standards for software engineering, and that this was likely to be provided by an independent service.⁸³

Committee comment

- 5.88 The Committee accepts the need for electronic counting of the Senate vote and encourages the AEC to continue its development of accredited and accountable computerised counting programs. The Committee intends to continue to encourage independent expert review of this area by organisations other than the AEC.

Alternative method of presenting Senate results

- 5.89 Mr Alan Jeffrey submitted that the computerised vote counting for the Senate allows for a change in the presentation of Senate results. Under the current system, counting is ceased once the final Senate vacancy is filled.⁸⁴
- 5.90 Section 277 of the Electoral Act allows the AEC to continue distributing second and later preferences for House of Representatives candidates after a candidate is declared elected, 'for the purpose of obtaining information'.⁸⁵ Mr Jeffrey argued that electronic vote counting for the Senate should enable the section 277 provision to be extended to Senate preferences, enabling the production of 'Elected Party Preferred' statistics:

With two-party preferred figures available for the lower house ... why should not the Senate enjoy equality and their own 'scrutiny for information'?⁸⁶

Committee comment

- 5.91 The Committee notes that due to the proportional representation system used for the Senate, Mr Jeffrey's proposal does not merely

83 Submission (AEC, no. 174), p. 21. The AEC intends to seek accreditation to Australian Standards ISO9126 – see *Standards Australia* internet site: <http://www.standards.com.au>; accessed 7 May 2003. This would likely be undertaken by an independent service such as BMM International. BMM International was used by Elections ACT in accrediting the electronic count system for the 2001 ACT Legislative Assembly election.

84 *Commonwealth Electoral Act 1918*, subsection 273 (32). For a brief explanation of counting Senate votes, see Chapter 7. See also AEC: *Counting the Votes: Senate*, at: http://www.aec.gov.au/_content/what/voting/count_senate.htm, accessed 6 May 2001.

85 *Commonwealth Electoral Act 1918*, section 277.

86 Submission (Mr A Jeffrey, no. 57).

entail the presentation of further information for general interest. The Committee appreciates Mr Jeffrey's views and recognises the arguments for both his and the system currently in place. Given the validity of the present system, the Committee sees no reason for change.

Re-counts

- 5.92 Under the Electoral Act, any candidate for the Senate or House of Representatives may request a re-count of the votes, prior to the declaration of the result.⁸⁷ A DRO or AEO may also initiate a re-count of their own motion. If a candidate's request for a re-count is refused, they may appeal to the Electoral Commissioner, who has final discretion to order or refuse the re-count.⁸⁸
- 5.93 For the 2001 federal election, re-counts were undertaken in the seats of Hinkler and Solomon.
- 5.94 The AEC submitted that some of the provisions in the Electoral Act relating to the conduct of a re-count can result in unnecessary delays in the re-count process. In particular, the AEC referred to the rules which relate to the sending of ballot papers to the AEO for review. At present, ballot papers can be only hand-delivered, or sent by registered post or courier service.
- 5.95 According to the AEC, the time taken to dispatch and return disputed ballot papers could delay the progress of the result for a Division by a number of days, particularly if the Division is a remote country Division. The AEC conceded that in some cases, the AEO would need to examine the original ballot papers to make an informed decision. Nonetheless, it argued that in many cases a faxed or electronic version of the ballot papers would suffice.⁸⁹
- 5.96 The AEC recommended that the Electoral Act and the Referendum Act be amended:
- to enable ballot papers for review by the AEO at a recount to be faxed, transmitted electronically, or forwarded by whatever practicable means between the DRO and AEO.⁹⁰

87 It should be noted that a re-check (as distinct from a re-count) is a standard procedure where a result cannot be determined without a distribution of preferences.

88 *Commonwealth Electoral Act 1918*, sections 278 and 279.

89 Submission (AEC, no. 147), p. 43.

90 Submission (AEC, no. 147), p. 43.

Committee comment

- 5.97 While the Committee appreciates the AEC's arguments about speed and convenience, it believes that it is important to maintain the integrity of the re-count process and that for this reason, re-counts should continue to be made on the basis of the original ballot papers only.

Election results

- 5.98 The results of the election are officially declared by each Division's Divisional Returning Officer (for House of Representatives elections) and the Australian Electoral Officer for each State or Territory (for Senate elections). The names of the successful candidates are also added to the election writs, which must be returned to the Governor-General (House of Representatives writs, and ACT and NT Senate writs) or State Governor (other Senate writs), within 100 days of their issue.⁹¹
- 5.99 The AEC publishes the official results in its Electoral Pocketbook, in hardcopy and CD-ROM, and on its internet site.

Time differences and the election result

- 5.100 Several submissions raised concerns about the broadcasting of preliminary election results from the Eastern States and the ACT, despite the fact that time differences mean that polling in the Western States is incomplete. The problem is exacerbated if an election is held during daylight savings time.
- 5.101 Mrs Lorna Graham submitted that while she realised that early forecasts of election results are far from definite:

To give 'floating' voters even a sniff of the way things are looking over here [in the Eastern States] well before the time for their polling booths to close, seems to me greatly unfair no matter which party would be chosen by the later voter.⁹²

91 *Commonwealth Electoral Act 1918*, Part XIX – The return of the writs. See also AEC: *Commonwealth Electoral Procedures – Election Timetable*, at: http://www.aec.gov.au/_content/how/procedures/electoral_procedures/timetable.htm, accessed 6 May 2003.

92 Submission (Mrs A. Graham, no. 36). See also submission (Vancouver-Denmark ALP Sub Branch, no. 152).

- 5.102 This issue has been raised in previous Committee inquiries. The 1993 and 1996 Committees found that there was no evidence to support concerns that broadcast of early results from the Eastern States influence voters' decisions in Western Australia.⁹³
- 5.103 Submissions to this inquiry and past inquiries have advocated a broadcast blackout on election results until the polls have closed in Western Australia. The imposition of a broadcast blackout would be likely to have practical difficulties, and the Committee does not support a change to the current arrangements.

Transmission of results

- 5.104 As in previous elections, the National Tally Room (NTR) provided progressive voting information at the 2001 federal election.
- 5.105 Security was upgraded given the proximity in time of the 2001 federal election to the terrorist attacks in the USA on 11 September 2001. As a result, fewer members of the public were admitted to the NTR at any one time than in previous elections, leading to long queues. The AEC advised that this issue would be addressed for the next election.⁹⁴
- 5.106 The AEC will continue to experiment with the means by which results are presented on the Tally Board, and the speed with which these are presented. The AEC's latest initiative for faster presentation of election results was the use of high-speed A3 printers to produce results sheets for each Divisional update.⁹⁵
- 5.107 Electoral results were also published on the Virtual Tally Room on the AEC's website. This was the third election event at which the Virtual Tally Room was used (the first two being the 1998 federal election and the 1999 Republic Referendum). The AEC submitted that this site underwent 'code review and enhancements' to improve the performance of the application on election night 2001.⁹⁶ The site received over 5.6 million hits on election night, with an average visit lasting just over 33 minutes.⁹⁷

93 JSCEM 1993: *The 1993 Federal Election: Report of the inquiry into the conduct of the 1993 Federal Election, and matters related thereto*; Parliament of Australia; November 1994, p. 28. JSCEM, *The 1996 Federal Election* (1997), as above, p. 65.

94 Submission (AEC, no. 147), p. 42.

95 Submission (AEC, no. 147), p. 42.

96 Submission (AEC, no. 147), p. 19.

97 Submission (AEC, no. 147), p. 12.

- 5.108 The HS Chapman Society submitted that the use of the Virtual Tally Room should be reviewed. Referring to results for the 1999 Republic Referendum, the Society stated that:

Results were reversed in transit from at least three polling stations ... in favour of the 'yes' vote in the referendum. Persistent protest by Professor Malcolm Mackerras concerning the Young Town Hall led to a correction by the AEC. Could this happen in elections?⁹⁸

- 5.109 Professor Mackerras confirmed this, recalling that:

there were three polling places at Young, two of which returned solid 'No' majorities but one a solid 'Yes' majority.

I recall that - apart from that one Young polling place and two very close to Canberra - every polling place in Hume went solidly 'No'. Consequently I inquired about the one 'Yes' polling place at Young and they discovered the votes had been reversed.

The correction of that very, very slightly increased the 'No' majority for NSW as a whole.⁹⁹

- 5.110 In response, the AEC noted that the votes in Young had been correctly counted, but 'had been transposed on the results slip, and rung through incorrectly'.¹⁰⁰ Consequently, the DRO for Hume sought approval from the AEO for New South Wales to do a fresh scrutiny on the three polling places implicated, and the results were corrected.

- 5.111 Ultimately, the AEC noted that:

All federal election results are subject to a fresh scrutiny where any transcription errors are corrected.¹⁰¹

Committee comment

- 5.112 The Committee does not see a need for a review of the Virtual Tally Room.

98 Submission (HS Chapman Society, no. 146), p. 1.

99 Professor Malcolm Mackerras, email to Secretariat, 17 September 2002.

100 Submission (AEC, no. 174) p. 29.

101 Submission (AEC, no. 174) p. 29.