THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

REPORT OF THE INQUIRY INTO ALL ASPECTS OF THE CONDUCT OF THE 1996 FEDERAL ELECTION AND MATTERS RELATED THERETO

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FOREWORD

Since 1983 the Commonwealth Parliament has established a Joint Select Committee on Electoral Reform or a Joint Standing Committee on Electoral Matters after every Federal election. As a result the *Commonwealth Electoral Act 1918* has been extensively reviewed and amended, the Australian Electoral Office has been replaced by the independent Australian Electoral Commission (AEC) and electoral matters in general have been subject to comprehensive parliamentary scrutiny.

This report responds to a reference to inquire into "all aspects of the conduct of the 1996 Federal election and matters related thereto". The reforms we advocate herein are the most far-reaching proposed by the Parliament since the *First Report* of the Joint Select Committee on Electoral Reform some 14 years ago. Our 73 recommendations, if accepted by the government, will lead to: better safeguards against fraudulent enrolment, the repeal of compulsory voting, the repeal of the provisions which led to Albert Langer's imprisonment during the election, a ban on misleading statements in election advertising, a referendum to clarify the "office of profit" and "foreign allegiance" disqualifications in section 44 of the Constitution, improvements to election funding and financial disclosure laws, an open review of the fitness of the AEC to conduct elections and referenda into the 21st century, and numerous other reforms.

While most of the recommendations have the support of all members of the Committee, given the comprehensive nature of the inquiry there are inevitably some areas where members have not been able to reach unanimous agreement. In those areas members have exercised their right to add minority reports.

As Chairman, I am grateful to Deputy Chair Senator Stephen Conroy and our fellow members for their energetic participation in the inquiry. I particularly thank my colleague Michael Cobb MP, who as Chairman until April of this year was responsible for receiving the evidence to the inquiry and early drafting of this report. My thanks also to the Committee Secretary Mr Christopher Paterson, the Inquiry Secretary Mr Russell Chafer, the Administrative Officers Mrs Lorraine Hendy and Ms Belynda Zolotto, and the other staff who worked in the secretariat during the course of the inquiry.

The Committee greatly appreciates the contribution of those individuals and organisations who made submissions and appeared as witnesses at public hearings. In particular, we are indebted to the staff of the AEC for their unfailingly prompt and comprehensive responses to our demands over the past year.

While some of our recommendations will, if adopted, represent a cultural and administrative challenge for the AEC, I expect it will respond with the same professional attitude it displayed throughout the inquiry. The Commonwealth electoral system will be greatly improved as a result.

Mr Gary Nairn MP
CHAIRMAN

June 1997

TERMS OF REFERENCE

That the Joint Standing Committee on Electoral Matters inquire into and report on all aspects of the conduct of the 1996 federal election and matters related thereto.

JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

Members

Chairman	Mr Gary Nairn MP[1]
Deputy Chair	Senator Stephen Conroy
Members	Senator Eric Abetz
	Senator the Hon Nick Minchin
	Senator Andrew Murray[2]
	Mr Michael Cobb MP[3]
	Mr Laurie Ferguson MP
	Mr Robert McClelland MP[4]
	Mr Graeme McDougall MP

Staff

Secretary	Mr Christopher Paterson
Inquiry Secretary	Mr Russell Chafer
Inquiry Staff	Mrs Lorraine Hendy
	Ms Belynda Zolotto

1 Chairman from 29 April 1997.
2 Appointed 6 February 1997 in place of Senator Vicki Bourne (Senator Bourne appointed in place of Senator Meg Lees 1 July 1996).
3 Chairman to 9 April 1997. From 9 to 30 April 1997, consideration of this report was undertaken by a sub-committee chaired by Mr Cobb MP and consisting of all members of the Committee.
4 Appointed 15 May 1997 in place of Mr Alan Griffin MP.

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ABBREVIATIONS

ABC	Australian Broadcasting Corporation
ACT	Australian Capital Territory
ADF	Australian Defence Force
AEC	Australian Electoral Commission
AEO	Australian Electoral Officer
AFP	Australian Federal Police
ALP	Australian Labor Party
ANAO	Australian National Audit Office
APHA	Australian Private Hospitals Association
APS	Australian Public Service
ATO	Australian Taxation Office
ATSIC	Aboriginal and Torres Strait Islander Commission
ATSIEIS	Aboriginal and Torres Strait Islander Electoral Information Service
AUSTRAC	Australian Transaction Reports and Analysis Centre
CEA	Commonwealth Electoral Act
CJ	Chief Justice
CLP	Country Liberal Party
DEETYA	Department of Employment, Education and Youth Affairs
DFAT	Department of Foreign Affairs and Trade
DIMA	Department of Immigration and Multicultural Affairs
DLP	Democratic Labor Party
DPP	Director of Public Prosecutions
DRO	Divisional Returning Officer
DSS	Department of Social Security

DVA	Department of Veterans Affairs
EARC	Electoral and Administrative Review Commission
ECA	Election Complaints Authority
ECQ	Electoral Commission Queensland
ELMS	Election Management Systems
FTR	Financial Transactions Reports (Act)
GVT	Group Voting Ticket
HIC	Health Insurance Commission
IT	Information Technology
J	Justice
MLA	Member of the Legislative Assembly
MP	Member of Parliament
NSW	New South Wales
NT	Northern Territory
PC	Personal Computer
PVC	Postal Vote Certificate
RAAF	Royal Australian Air Force
RMANS	Roll Management System
SCAG	Standing Committee of Attorneys-General
TCP	Two Candidate Preferred
TENIS	The Election Night System
US	United States
USA	United States of America
WA	Western Australia

CHAPTER SUMMARY AND LIST OF RECOMMENDATIONS

Chapter One - Introduction

This Chapter provides information on the 1996 Federal election and the conduct of the inquiry.

Chapter Two - Electoral Integrity

It is unacceptable that the most fundamental transaction between a citizen and the government - the act of choosing the government at a democratic election - is subject to a far lower level of security than such lesser transactions as opening a bank account, applying for a passport, applying for a driver's licence or registering for social security benefits, to name but a few.

The Committee therefore recommends that the witnessing requirement on the enrolment form be upgraded, electors be asked to produce at least one form of proof of identity for enrolment, the government expedite cross-checking of electoral data with information held by other agencies, new enrolments cease on the day the writ for an election is issued and "subdivisional" voting be re-examined. Certain amendments should also be made to the procedures for removing names from the electoral rolls following objection action.

Recommendation 1:

> **that the AEC prepare a comprehensive implementation plan on the Committee's proposed measures to improve the integrity of the enrolment and voting process, and report back to the Committee by the end of 1997.** (p7)

Recommendation 2:

> **that as part of the implementation plan recommended above, the AEC nominate a prescribed class of persons eligible to complete the witnessing portion of the enrolment form if upgraded into a proof of identity declaration. The upgraded enrolment form should specify that a witness must be on the Commonwealth electoral roll (rather than merely eligible to be enrolled). Adequate provision should be made for identifiable groups of people who will face unusual difficulties in finding a witness.** (p7)

Recommendation 3:

> **that the Electoral Act be amended to provide that an applicant for enrolment must produce at least one original item of documentary proof of identity, where such information has not been provided previously (that is, all enrolment transactions initially and new enrolments thereafter). Acceptable documents might include**

photographic drivers' licences, Birth Certificates or extracts, Social Security papers (such as notice or advice of a pension) or Veterans' Cards, Citizenship Certificates, passports, Medicare Cards, or a written reference for a limited range of clients unable to produce the above documentation. (p9)

Recommendation 4:

that in co-operation with relevant Commonwealth, State and Territory departments and agencies, the AEC conduct a study identifying costs, benefits, methods of implementation, and requirements for legislative amendment of the following options for the expanded matching of enrolment data:

(a) manual provision of data in response to requests for information relating to individual enrolments;

(b) bulk comparison of data held by the AEC and other departments and agencies;

(c) on-line connections between the AEC's Roll Management System (RMANS) and the computer systems of other government departments and agencies, enabling validation of data as an enrolment form is entered onto the system; and

(d) such other options as may appear as a result of the study to appear viable. (pp11-12)

Recommendation 5:

that the Electoral Act be amended to make clear that claims for enrolment from persons who state they have achieved citizenship through naturalisation under the *Australian Citizenship Act 1948*, but who do not provide a date of naturalisation or citizenship number, will not be accepted until such information has been verified by the AEC (see also Recommendation 4 on cross-checking of electoral data against external databases). (p13)

Recommendation 6:

that section 155 of the Electoral Act 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. (p14)

Recommendation 7:

that as part of the implementation plan referred to at Recommendation 1, the AEC prepare a detailed proposal for the

reintroduction of subdivisional voting for future Federal elections. The proposal should consider a corresponding public awareness campaign (so that people are aware they may be disenfranchised if they fail to advise the AEC of a change of address across a subdivisional boundary, even when remaining within the same division). (p16)

Recommendation 8:

that in relation to multiple voting, the word "wilfully" be deleted from section 339(1)(j) of the Electoral Act. (p17)

Recommendation 9:

that electoral rolls for a division or subdivision again be made available for inspection in local libraries and Post Offices. (p17)

Recommendation 10:

further to Recommendation 6, that section 118(5) of the Electoral Act be amended to provide that the period during which a Divisional Returning Officer cannot remove a name from the roll following objection action commences at the close of rolls. (p19)

Recommendation 11:

that a) sections 95, 99 and 101 of the Electoral Act be amended so that electors are required to re-enrol within one month of changing address anywhere in Australia and b) the AEC be empowered to negotiate with utilities and local government so that documents sent out by those bodies, to persons who have changed address, include reminders to change enrolment details. (p20)

Chapter Three - Preferential and Compulsory Voting

Compulsory voting was first introduced in Australia in 1915 by the government of Queensland. A person who does not vote at a Federal election is guilty of an offence and must pay a penalty of $20.00, unless he or she can provide to the Australian Electoral Commission (AEC) a reason which must be "valid and sufficient". Failure to pay the penalty may lead to court proceedings and a fine of up to $50.00 plus court costs.

To date the political parties have conspired to use the law to do what in virtually every other democracy the parties themselves must do - namely, maximise voter turnout at elections. However, if Australia is to consider itself a mature democracy compulsory voting should now be abolished. The assertion that voting is a "right" means little if one can be imprisoned for conscientiously choosing not to exercise that right - or rather, for conscientiously exercising the right not to vote.

Also, controversy was caused during the election by the jailing of Mr Albert Langer. Mr Langer had defied a Victorian Supreme Court injunction preventing him from breaching section 329A of the Electoral Act. Section 329A makes it an offence to encourage, during the election period, voters to fill in House of Representatives ballot papers other than in accordance with the full preferential voting method set out in section 240 of the Electoral Act.

The Langer affair has clearly shown that section 329A is an ineffective and heavy-handed provision. Section 329A and related provisions should be repealed, while the wording of section 240 should be clarified.

Preferential voting for the Senate is also examined in this Chapter.

Recommendation 12:

> **that section 245 of the Electoral Act and section 45 of the Referendum Act, and related provisions providing for compulsory voting at Federal elections and referenda, be repealed. In the interests of effective management of the electoral system and maintaining accurate records of turnout, compulsory enrolment should be retained.** (pp26-27)

Recommendation 13:

> **that sections 270(2), 329(3) and 329A of the Electoral Act be repealed.** (p32)

Recommendation 14:

> **that section 240 of the Electoral Act, which provides for full preferential voting at House of Representatives elections, be amended to include the words "consecutive numbers, without the repetition of any number".** (p32)

Recommendation 15:

> **that if Recommendation 13 is accepted, at future Federal elections the AEC monitor how many informal votes would have been accepted as formal had section 270(2) of the Electoral Act remained in force.** (p33)

Recommendation 16:

> **that before the next election, the government seek advice on the constitutional validity of sections 272(2) and 272(3) of the Electoral Act, which allow a Senate group to lodge multiple voting tickets.** (p35)

Recommendation 17:

> **that the AEC revise its procedures to ensure compliance with section 216 of the Electoral Act, which requires that Senate group**

voting tickets be "prominently displayed" on posters at polling booths. Such information should be made available to electors who request it before polling day. (p36)

Chapter Four - Enrolment and Voting by Certain Groups

The Committee recommends, among other things, that:

- the Electoral Act be amended to prevent voters in the Northern Territory being unfairly disenfranchised by the continuing existence of "subdivisional" boundaries, which were abolished elsewhere (the electorate of Kalgoorlie excepted) several years ago;
- following the next election the AEC review its service delivery to indigenous electors, in the context of the recent abolition of the Aboriginal and Torres Strait Islander Electoral Information Service (ATSIEIS);
- procedures for "assisted voting" be amended to prevent voters being improperly influenced;
- any person serving a prison sentence for an offence against the laws of the Commonwealth, or of a State or a Territory, not be entitled to enrol and vote at Federal elections; and
- improvements be made to procedures for voting by the disabled and residents of hospitals and nursing homes.

Recommendation 18:

that the Electoral Act be amended to allow the reinstatement of provisional votes where an elector has moved between subdivisions in the Northern Territory or Kalgoorlie, but has remained within the relevant division. (p40)

Recommendation 19:

that following the next Federal election the AEC conduct a review of its service delivery to Aboriginal and Torres Strait Islander electors, in the context of the abolition of the ATSIEIS, and report back to the Parliament. (p44)

Recommendation 20:

that in relation to assisted voting, section 234(1) of the Electoral Act be repealed, and section 234(2) be amended to allow any polling official (rather than a "presiding officer") to assist a voter. (p46)

Recommendation 21:

that the ATSIC Act be amended to provide that ATSIC elections may not be held in the period between the close of nominations and the close of polling for a Federal, State or Territory election. (p46)

Recommendation 22:

that the Electoral Act be amended to allow Australians resident overseas for the purposes of career or employment to remain enrolled, or to enrol after departing Australia, for a subdivision under similar criteria to those provided for itinerant electors in section 96(2A) of the Act. The qualifying period of three years or less under section 94 of the Act should be extended to six years (with the retention of the capacity, under sections 94(8) and 94(9), for electors to apply for further extensions on a year-by-year basis). (pp47-48)

Recommendation 23:

that section 193(2) of the Electoral Act be amended to replace any reference to the "Queen's Dominions" with "Commonwealth". (p48)

Recommendation 24:

that section 93(8)(b) of the Electoral Act be amended to provide that a person serving a prison sentence for any offence against the law of the Commonwealth, or of a State or Territory, is not entitled to enrol or vote at Federal elections. (p48)

Recommendation 25:

that the AEC improve education for staff in hospitals and nursing homes (and other such institutions likely to be appointed as polling places) to ensure that patients are not deprived of the right to vote, and that the rights of party scrutineers are understood and applied consistently. (p50)

Recommendation 26:

that section 226(2A) of the Electoral Act be amended so that during the conduct of mobile polling at special hospitals, Electoral Visitors are allowed to advise voters that how-to-vote material is available. (p51)

Recommendation 27:

> **that a drafting error in section 226(4)(a) of the Electoral Act be corrected, by replacing the reference therein to section 219 of the Act ("participation by candidates in the conduct of an election") with a reference to section 348 ("control of behaviour at polling booths etc.").** (p51)

Recommendation 28:

> **that the Electoral Act be amended to enable presiding officers to take ballot papers immediately outside a polling place to electors who, because of physical incapacity, cannot enter the polling place. Scrutineers should be given the opportunity to observe this process.** (p52)

Chapter Five - Enrolment and Voting: Other Issues

Some 13.8 percent of the votes cast at the 1996 Federal election were "declaration" votes (postal, pre-poll, absent and provisional votes), for which electors filled out their details on envelopes into which their ballot papers were placed. The Committee rejects the AEC's proposal that voters casting pre-poll votes in their own electorates have ordinary votes rather than the present declaration votes.

Certain restrictions should be placed on the political parties' use of the AEC's official postal vote application form. Also, the postal vote envelope needs to be redesigned as a matter of urgency, given that a number of envelopes split when sorted through Australia Post's machinery. The redesign should take account of concerns about the secrecy of postal voting.

Regarding the method of marking the ballot paper, the existing formality provisions are generally appropriate. Also, the Committee rejects calls for computerised voting. A computerised system would be expensive and less secure than existing methods, and there is no evidence to suggest that voters would find a computer screen more user-friendly than a conventional ballot paper.

The counting of votes is known as the "scrutiny". The Senate scrutiny should be computerised, while the "two candidate preferred count" (a provisional distribution of preferences direct to the two candidates most likely to win each seat) should be used where possible for the formal declaration of House of Representatives results.

Also examined in this Chapter are the live broadcast of early results to Western Australia, queuing at some polling places and the AEC's public awareness campaigns. On this last matter, the Committee is concerned about instances of the AEC's Voting Guide being delivered to households together with political material.

Recommendation 29:

that the AEC, in its pre-election advertising, emphasise that pre-poll and postal voting is only available to those electors who will be unable to cast an ordinary vote on polling day. (p54)

Recommendation 30:

that the Electoral Act and the Referendum Act be amended to make clear that a postal vote application form sent to an elector must be the official AEC form or an exact replica, and must not be incorporated into another document with material issued by a body other than the AEC. (p55)

Recommendation 31:

that the postal voting provisions of the Electoral Act and the Referendum Act be amended to enable double enveloping, by deleting the requirement for the declaration certificate and the return address of the Divisional Returning Officer to be printed on the envelope into which the postal ballot papers are placed. (pp56-57)

Recommendation 32:

that paragraph 7 of Schedule 3 of the Electoral Act and paragraph 7 of Schedule 4 of the Referendum Act concerning the postmarking of postal vote envelopes be repealed, 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. 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. (p58)

Recommendation 33:

that the Electoral Act be amended to permit candidates to receive, on request, an electronic copy of the marked roll of those electors who lodged postal votes at the relevant election. (p58)

Recommendation 34:

that the Electoral Commissioner be provided with a discretion in the Electoral Act with regard to the layout and formatting of the Senate ballot paper, to enable cost-effective use of standard paper stocks and printing technologies. Any new format should not compromise the legibility of the ballot paper. (p61)

Recommendation 35:

that section 273 of the Electoral Act be amended so as to permit the Senate scrutiny to be carried out by either the current manual processes or by a computer process based on the same principles as the manual count. (p63)

Recommendation 36:

that the Electoral Act be amended so that, where on the basis of first preferences votes the exclusion of all but two candidates for a House of Representatives division is inevitable, the declaration of the poll proceeds based on the result of the two candidate preferred count. (p64)

Recommendation 37:

that section 266 of the Electoral Act concerning the preliminary scrutiny of declaration votes be amended to provide that the preliminary scrutiny may begin on the Monday before polling day. (p65)

Recommendation 38:

that sections 153(2)(b) and 154(4)(b) of the Electoral Act, and section 14(2) of the Referendum Act, be amended to require the advertising of election and referendum writs in only one newspaper circulating in a State or Territory where there are not two newspapers in wide circulation. (p68)

Chapter Six - Nomination of Candidates and Registration of Parties

In this Chapter the Committee:

- recommends a referendum to resolve uncertainty caused by the "foreign allegiance" and "office of profit" disqualifications in section 44 of the Constitution;
- recommends that the nomination deposit required of candidates, and the number of electors' signatures required to nominate as an independent candidate, be increased to deter candidatures unlikely to attract significant public support;
- recommends a 24-hour gap between the close of nominations and the declaration of candidatures, to give the AEC more time to check last-minute nominations;
- concludes that the controversy surrounding the election of Ms Pauline Hanson as the Member for Oxley does not, in itself, warrant an impractical amendment

to provide for party affiliations to be removed from the ballot paper after the close of nominations; and

- examines other matters concerning the endorsement and nomination of candidates and the registration of parties.

Recommendation 39:

that at an appropriate time, such as in conjunction with the next Federal election, a referendum be held on a) applying the "office of profit" disqualification in section 44(iv) from the start of an MP's term, rather than from the time of nomination, and b) deleting section 44(i) on "foreign allegiance" and otherwise amending the Constitution to make Australian citizenship a necessary qualification for membership of the Parliament. (pp73-74)

Recommendation 40:

that section 170(3) of the Electoral Act be amended to increase the deposit for nomination from $250 to $350 for the House of Representatives, and from $500 to $700 for the Senate. (p74)

Recommendation 41:

that section 166(1)(b)(i) of the Electoral Act be amended so that the number of signatures required in support of a nomination by a candidate not endorsed by a registered political party is increased from six to 50. (p75)

Recommendation 42:

that sections 156(1), 176 and 213(1)(a) of the Electoral Act be amended to reduce the nomination period by one day (to not less than 10 days or more than 27 days), with the declaration of nominations to be held 24 hours after the close of nominations. Sections 211 and 211A of the Act (which refer to the "closing" of nominations) should be amended, so that Senate candidates and groups still have 24 hours after the declaration to advise the AEC of their desired preference distributions. (pp75-76)

Recommendation 43:

that sections 176(1), 213(1)(a) and 283(1) of the Electoral Act be amended to allow the Senate ballot paper draw and the declaration of the Senate result to be carried out at the place of nomination, or at another convenient location as decided by the Australian Electoral Officer, if insufficient space is available at the AEC Head Office. (pp76-77)

Recommendation 44:

that the Electoral Act be amended to enable registered party names or abbreviations, as appropriate, to be printed against the names of candidates, where two or more parties are seeking to use the same party identifier to endorse candidates at an election. An appropriate description should also be able to be used if necessary. (p78)

Recommendation 45:

that section 169B of the Electoral Act be amended to provide that a candidate endorsed by more than one political party must specify to the AEC, in writing, the name of the political party to be printed on the ballot paper. (p78)

Recommendation 46:

that the Electoral Act be amended to enable a registered political party to object to the continuing use of a party name and/or abbreviation by another party which obtained its registration by claiming related party status to that registered political party, where that relationship no longer exists. (p79)

Chapter Seven - Election Campaigning

As is always the case after a Federal election, several MPs and political parties wrote to the inquiry to express concern about opponents' campaigning practices. In addition, a number of submission writers dealt with such policy issues as the regulation of "truth" in political advertising.

A provision similar to section 113 of South Australia's Electoral Act (which bans "inaccurate and misleading" purported statements of fact in election advertising) should be introduced into Commonwealth law. The provisions of the Electoral Act which govern the authorisation of campaign material also need to be amended, while the penalties applying to electoral offences should be reviewed.

Section 91 of the Electoral Act provides that after each general election, the latest printed rolls and "habitation indexes" (name and address information from the rolls reformatted in street address order) shall be copied to registered political parties, Senators and Members of the House of Representatives. The rolls and habitation indexes only show name and address information. The additional provision of age, gender and salutation information would greatly assist MPs and political parties in their basic role of communicating with electors.

Recommendation 47:

that the Electoral Act and the Broadcasting Act be amended to prohibit, during election periods, "misleading statements of fact" in electoral advertisements published by any means. (p85)

Recommendation 48:

that section 328 of the Electoral Act and section 121 of the Referendum Act be amended, to provide that where an electoral advertisement is presented so that the AEC believes there is no reasonable doubt as to the individual who, or body which, is responsible for its publication, the authorisation requirements will be taken to be satisfied. The authorisation provisions should still specify that correct name and (street) address details must be clearly displayed. (p87)

Recommendation 49:

that section 331 of the Electoral Act ("heading to electoral advertisements") be amended to ensure that a) as well as newspapers it applies to other periodical newsheets and magazines that accept paid advertisements, and b) it applies to advertisements containing electoral matter whether inserted "for reward" or free of charge by the owner or editor of the publication. (p88)

Recommendation 50:

that section 332 of the Electoral Act and section 125 of the Referendum Act ("authors of reports etc. to be identified") be repealed. (p89)

Recommendation 51:

that a review of the level of penalties for offences under the Electoral Act and the Referendum Act be undertaken by the AEC with the assistance of the Attorney-General's Department, with a view to bringing the penalties into line with penalty rates for comparable offences under other Commonwealth statutes. (p90)

Recommendation 52:

that the enrolment form be amended to provide for electors' salutation details, and that section 91 of the Electoral Act be amended so that electors' gender, age and salutation details are provided to Members of Parliament and registered political parties, subject to a) sections 91A(1A)(c) and 91A(2)(c) of the Act being amended to make clear that the "permitted purposes" in relation to MPs and registered parties include research purposes, and b) the penalties for misuse specified in sections 91A and 91B of the Act

being increased from $1000 to $10 000 (the outcome of the review of penalties provided for in Recommendation 51 should not delay the proposed increase). (p93)

Recommendation 53:

that sections 89 to 92 of the Electoral Act, concerning improper use of roll information, be reviewed to take account of developments in computer technology. The existing entitlements of MPs and registered political parties should be maintained. (p94)

Recommendation 54:

that the Electoral Act be amended so that the prohibition on canvassing at "special hospitals" and hospitals that are polling places applies from the Monday before polling day to the expiration of polling day, and so that the gazettal of special hospitals is effective on an ongoing basis. (p97)

Chapter Eight - Election Funding and Financial Disclosure

Part XX of the Electoral Act provides for public funding of election campaigns, annual financial disclosure by registered political parties and donors, and post-election financial disclosure by parties, candidates, and others. The Committee recommends that:

- the various reporting thresholds be increased to more accurately reflect current financial values;
- political parties no longer be required to lodge an election return in addition to an annual return;
- political parties be permitted to lodge audited annual accounts in place of the annual return, subject to certain conditions being met;
- donations to a political party (or an independent candidate) of up to $1500 annually be tax deductible; and
- the amount of public funding for an election be based on total enrolment as at the close of rolls.

Recommendation 55:

that section 314AC(1) of the Electoral Act be amended so that political parties are required to disclose a total amount of $5000 or more, rather than $1500, received from a person or organisation during a financial year. (p101)

Recommendation 56:

that section 314AC(2) of the Electoral Act be amended to raise from $500 to $1500 the threshold for counting individual amounts received. (p101)

Recommendation 57:

that section 305B(1) of the Electoral Act be amended to increase from $1500 to $10 000 the amount above which a donor to a registered political party must furnish a return for the financial year. (p102)

Recommendation 58:

that section 309 of the Electoral Act be amended so that registered political parties are not required to lodge returns of electoral expenditure. (p102)

Recommendation 59:

that the Electoral Act be amended to allow 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 Act and b) the format of the accounts being approved by the AEC. (p102)

Recommendation 60:

that section 314AD of the Electoral Act be amended to replace the current requirement to report in detail amounts paid with a requirement to report total expenditure. (p103)

Recommendation 61:

that section 78 of the Commonwealth Income Tax Assessment Act be amended so that donations to a political party of up to $1500 annually, whether from an individual or a corporation, are tax deductible. (p104)

Recommendation 62:

that section 78 of the Income Tax Assessment Act be amended to provide that donations to an independent candidate at a Federal or State election are tax deductible, at the same level as donations to registered parties. (p104)

Recommendation 63:

that the Electoral Act be amended so that the amount of public funding available is based on the total enrolment at the close of rolls for an election, multiplied by the amount payable per elector as in section 294 of the Act. (p105)

Recommendation 64:

that section 311A of the Electoral Act, concerning annual returns by Commonwealth departments, be deleted and inserted in more appropriate legislation. (p105)

Chapter Nine - Other Matters

The AEC has a three-tiered structure with a Central Office in Canberra, a Head Office in each State and the Northern Territory, and offices in most of the House of Representatives electoral divisions. The divisional offices have a permanent staff of two to three officers including the Divisional Returning Officer (DRO). The ongoing debate about the divisional office structure is noted in this Chapter.

An election result for a House of Representatives division, or a State or Territory for the Senate, may be challenged by way of a petition to the High Court sitting as the Court of Disputed Returns. The Electoral Act should be amended to expedite petition results and to avoid a repeat, at the Commonwealth level, of the Mundingburra by-election in Queensland.

The Committee endorses four-year terms for the House of Representatives, and recommends that limits be placed on the extent to which by-elections can be delayed for partisan reasons.

The 1996 Federal election is the sixth in succession to be examined by a parliamentary committee on electoral matters. The Committee now intends to report on more specialised topics, having tabled this comprehensive review of the electoral system. An inquiry into industrial elections is underway, while later this year the Committee will seek a reference on the AEC's conduct of elections for the Aboriginal and Torres Strait Islander Commission (ATSIC).

Recommendation 65:

that when available, any government proposal for reorganisation of the AEC divisional office structure be referred to this Committee for inquiry and report. (p110)

Recommendation 66:

that if regionalisation does not proceed, funding for AEC divisional offices be increased to a level sufficient to maintain a permanent staff of three in each office. (p110)

Recommendation 67:

that if regionalisation does not proceed, the government provide special project funding as a matter of urgency to enable replacement of the information technology used in AEC divisional offices. (p111)

Recommendation 68:

that section 188 of the Electoral Act and section 61 of the Referendum Act be amended to provide that where Australian Defence Force (ADF) personnel are serving in an overseas country as a formed unit, and Australia Post certifies that postal vote applications or ballot papers would not, if posted, reach the personnel in time for their votes to be cast before the relevant deadline, then the requirements of section 188 and section 61 shall be satisfied if a Divisional Returning Officer provides the relevant applications or ballot papers to a designated member of the ADF. (p113)

Recommendation 69:

that similar amendments be made to the Electoral Act and the Referendum Act to cover cases where the AEC uses services other than postal services, such as contractual delivery, for the conveyance of postal voting material. (p113)

Recommendation 70:

that the Electoral Act and the Referendum Act be amended to provide explicitly that a failure of an alternative mechanism to the postal service shall not, in cases where the postal service has broken down, form the basis for a challenge to the result of the election in the Court of Disputed Returns. (p113)

Recommendation 71:

that the Electoral Act and the Referendum Act be amended so that the Court of Disputed Returns or the High Court must decide election or referendum petitions "as quickly as is reasonable in the circumstances". (p114)

Recommendation 72:

that section 354 of the Electoral Act be amended to enable the High Court to remit aspects of a petition to a Supreme Court, with the High Court retaining final jurisdiction on relief. (p114)

Recommendation 73:

that the Electoral Act be amended so that within 75 days of the resignation or death of a Member of the House of Representatives, a writ must be issued for a by-election (except in the four months before the expiry of the House of Representatives by effluxion of time). A similar amendment should apply to supplementary elections caused by, for example, the death of a candidate after the close of nominations. (p115)

CHAPTER ONE

INTRODUCTION

The 1996 Federal Election

1.1 The 37th Federal Parliament was dissolved on Monday 29 January 1996, writs being issued on the same day for a House of Representatives election and a half-Senate election. The electoral rolls closed on Monday 5 February and nominations closed on Friday 9 February 1996.

1.2 As at the close of rolls 11 655 190 electors were enrolled[1], representing an increase of 2.7 percent over the 1993 election. Between 29 January and 8 February 1996 a total of 428 694 enrolment cards were processed nationally, of which 100 718 were for new enrolments.

1.3 Polling day was Saturday 2 March 1996. In addition to 330 pre-poll voting centres, on polling day there were 7865 ordinary polling places of which nearly all were hired premises, such as school buildings, places of worship and community organisation halls. The Australian Electoral Commission (AEC) employed some 60 000 casual staff for the election.[2]

1.4 For the House of Representatives election 96.2 percent of the 11 740 568 eligible electors voted, as follows[3]:

9 737 227 (86.2%) cast ordinary votes
657 539 (5.8%) cast absent votes
434 841 (3.9%) cast pre-poll votes
359 604 (3.2%) cast postal votes
105 091 (0.9%) cast provisional votes

Some 13.8 percent of votes were therefore cast by way of declaration votes rather than ordinary votes, compared with 12.44 percent for the 1993 election.[4]

1.5 The informal vote for the House of Representatives increased from three percent in 1993 to 3.2 percent in 1996, and for the Senate increased from 2.55 percent in 1993 to 3.5 percent in 1996. Informal voting figures for each election since 1984 are set out in the chart overleaf [5]:

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1 Submissions pS151 & ppS257-9 (AEC)
2 Submissions pS1775 (AEC)
3 Submissions pS182 & ppS192-3 (AEC). Close-of-rolls enrolment and the number of eligible electors are different due to death deletions and provisional enrolments being added to the close-of rolls total.
4 AEC, *Behind the Scenes: the Australian Electoral Commission's 1996 Federal Election Report* (July 1996) p22
5 Submissions ppS197-8, ppS712-23 & ppS1057-190 (AEC); transcript ppEM412-4 (AEC)

Informal vote (%)	**1996**	**1993**	**1990**	**1987**	**1984**
House	**3.2**	3.0	3.2	4.9	6.3
Senate	**3.5**	2.55	3.4	4.1	4.3

1.6 The result of the House of Representatives election was that of the 148 Members elected, 75 were from the Liberal Party of Australia, 49 were from the Australian Labor Party (ALP), 18 were from the National Party of Australia, five were independents and one was from the Northern Territory Country Liberal Party (CLP). Of the 40 Senators elected in the half-Senate election, 17 were from the Liberal Party, 14 were from the ALP, five were from the Australian Democrats, two were from the National Party, one was from the CLP and one was from the Tasmanian Greens. Following the return of the writs to the Governor-General and the State Governors, the 38th Parliament met for the first time on 30 April 1996.

1.7 As at 30 June 1996 expenditure on the election was $57 202 000 or $4.91 per elector, excluding $32 157 000 paid to political parties and candidates in public funding.[6] Comparative figures for previous elections are:

Average cost per elector	**1996**	**1993**	**1990**	**1987**	**1984**
Actual cost ($)	**4.91**	4.25	4.02	3.75	3.13
Constant $ (Mar '96 base)	**4.91**	4.64	4.74	5.40	5.54

The Inquiry

1.8 Since 1983 there has been a Joint Select Committee on Electoral Reform or a Joint Standing Committee on Electoral Matters in every Parliament (the present Committee's Resolution of Appointment is at Appendix 1). The successive committees have reported on every Federal election conducted by the AEC since its establishment in 1984.

1.9 On 12 June 1996 the Minister for Administrative Services, the Hon David Jull MP, wrote to the Committee asking it to inquire into and report on "all aspects of the conduct of the 1996 Federal election and matters related thereto". Members of the public were invited to make submissions in an advertisement placed in the major daily newspaper in each State and Territory on Saturday 22 June 1996. In addition letters were sent to individuals and organisations with a particular interest in the process, and the then Chairman wrote to all Senators and Members on 19 June 1996 to invite them to make submissions.

6 Submissions ppS221-2 & pS265 (AEC)

1.10 The inquiry received 135 submissions from the public, various political organisations, members of Federal and State parliaments, the AEC, interested government agencies and others. The submissions are listed at Appendix 2. The 15 sets of documents listed at Appendix 3 were accepted as exhibits. The Committee also held seven public hearings through August to November 1996. A list of the hearings and the witnesses heard is at Appendix 4.

1.11 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.

1.12 The basic strengths of the *Commonwealth Electoral Act 1918* (the Electoral Act) and its administration by the AEC were again demonstrated in 1996. It should be a matter of pride that some 11.3 million widely dispersed electors can have their votes recorded so efficiently, and that within a couple of hours of the close of polls they can be told which party is to form government. The continuing overseas interest in the AEC's services is also testimony to Australia's election systems.

1.13 Nonetheless, several major reforms should now be implemented. Matters of particular interest to the Committee include the prevention of electoral fraud, sanctions against misleading political advertising, questions raised by the imprisonment of Mr Albert Langer, the requirements of section 44 of the Constitution, Australia's compulsory voting system, enrolment and voting by certain groups, the financial disclosure requirements of the Act and the staffing and structure of the AEC. These and other matters are examined in the following chapters of this report.

CHAPTER TWO

ELECTORAL INTEGRITY

Measures to Prevent Fraud

2.1 The inquiry's most contentious topic was the question of whether current enrolment and voting procedures can prevent, or even detect, electoral fraud.[7] Electoral fraud can encompass multiple voting (in the names of existing electors, or in false names deliberately placed on the roll for the purpose), being enrolled for the wrong House of Representatives electorate, or being wrongly enrolled by virtue of being a foreign citizen or underage. Obviously some of these circumstances can also arise through misunderstanding on the part of electors, rather than deliberate attempts at fraud.

2.2 The inquiry did not reveal improper enrolment or voting sufficient to affect any result at the election. However, it is unacceptable that the most fundamental transaction between a citizen and the government - the act of choosing the government at a democratic election - is subject to a far lower level of security than such lesser transactions as opening a bank account, applying for a passport, applying for a driver's licence or registering for social security benefits, to name but a few.

2.3 Disquiet in sections of the community about the potential for electoral fraud was reflected in the range of measures suggested during the inquiry. The proposed measures included:

- closing the electoral rolls as soon as an election is announced, rather than seven days afterwards as is currently the case;
- a more stringent witnessing requirement on the enrolment form;
- proof of identity for enrolment and/or voting, or various forms of "voter card" which could be surrendered at the polling booth;
- the restoration of subdivisional voting, whereby electors were enrolled for a specific subdivision rather than being able to cast an ordinary vote anywhere in a division (a House of Representatives electorate), or the introduction of precinct

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7 Submissions pS52 (J.Bombardieri), ppS55-9 (M.Spill), ppS74-5 (P.Neuss), ppS80-4 (A.Viney), pS96 (C.Hughes), ppS108-14 (K.Murphy), ppS114-26 (A.McGrath), ppS206-8, ppS262-4 (AEC), pS286 (R.Bath), pS348 (Liberal Party Dundas Branch), ppS349-51 (B.Joy), pS367, pS370 (J.Gash MP), ppS374-5 (L.Johnston), pS376 (D.Moloney), ppS377-8 (Liberal Party Gosford Branch), pS379 (B.MacCarthy MP), ppS410-1 (A.Cadman MP), ppS618-20 (D.Freeman), pS623, ppS627-8 (Liberal Party), pS639 (E.Cameron MP), ppS644-53, ppS667-84 (A.McGrath), pS686, pS688 (Northwest Members of the WA Parliamentary Labor Party), ppS1337-43 (A.McGrath), ppS1356-60, pS1364, ppS1373-5 (AEC), ppS1397-421 (R.Patching), ppS1465-6, ppS1469-71, ppS1479-81, pS1501 (AEC), ppS1520-1 (A.McGrath), ppS1522-3 (Australia Post), ppS1692-852 (AEC), ppS1865-6 (B.Martin), ppS1869-70, ppS1939-40 (A.McGrath), ppS1954-5 (AEC), ppS1991-3 (Australia Post), ppS2007-23 (A.McGrath) *cont over*

voting whereby an elector's name would appear on only one roll at one polling place;

- more extensive cross-checking of electoral data with records held by other agencies;
- a complete re-enrolment of the nation's voters once some or all of the above safeguards are in place, or the compilation of a register of voters for each election (as happens in Canada) rather than Australia's permanent electoral roll;
- a full quasi-judicial inquiry into the state of the electoral rolls and the AEC's administration thereof;
- "limited voter-tracing" whereby both the ballot paper and the ballot stub are numbered and can be inspected by order of a court;
- marking of the voter's thumb or finger with an ink of some description; and
- restrictions or greater checks on postal voting.

2.4 Having examined the evidence to the inquiry, the Committee believes that the witnessing requirement on the enrolment form should be upgraded, that electors should have to produce at least one form of proof of identity for enrolment, that the government should expedite cross-checking of electoral data with information held by other agencies, that new enrolments should cease on the day the writ for an election is issued and that subdivisional voting should be re-examined. These and other measures are examined further at pages 7 to 19.

2.5 The recommendations in this Chapter are not intended as a response to all the proposals put to the inquiry, but are simply an attempt to implement some minimum standards in time for the next Federal election. Experience of the revised procedures at future elections should guide further discussion on the need for reform.

2.6 While the upgraded requirements will raise administrative and resourcing questions, such difficulties have been overstated in the past and better standards for enrolment can be introduced without disenfranchising legitimate voters. However, the Committee accepts the AEC's suggestion that the cost of the proposed measures, the impact on the already strained staffing of AEC divisional offices (Chapter Nine refers), the implications under the Privacy

7 *cont* ppS2057-8, pS2061 (AEC), ppS2081-121 (R.Patching), pS2151 (A.McGrath), ppS2265-346 (AEC), ppS2353-7 (R.Patching), ppS2374-5, ppS2379-83, ppS2388-9 & ppS2394-413 (AEC); transcript ppEM13-4, ppEM26-37, ppEM70-6, ppEM78-80 (AEC), ppEM90-4 (N.Dondas MP), ppEM120-2 (ALP), ppEM126-7, ppEM130-4, ppEM142-4 (Liberal Party), ppEM152-79 (A.McGrath), ppEM180-94 (A.Viney), ppEM195-6, ppEM199-202, ppEM206-7 (D.Freeman), ppEM208-19 (B.MacCarthy MP), ppEM235-6 (Women Into Politics), ppEM240-55 (R.Patching), ppEM258-9, ppEM262-3 (G.Smith), ppEM274-5 (Qld Branch of the ICJ), ppEM280-3, ppEM286-7 (G.Johnson), ppEM290-303 (C.Hughes), ppEM330-1 (J.Gash MP), ppEM358-9 (W.Tuckey MP), ppEM370-2, ppEM377-87 (Northwest Members of the WA Parliamentary Labor Party), ppEM396-8, ppEM402-12, ppEM416-24, ppEM426-7, ppEM431-3 (AEC), ppEM448-9, ppEM452-5 (D.Melham MP), ppEM460-2, pEM466, ppEM475-7, ppEM479-93, pEM499 & ppEM501-4 (AEC)

Act and the impact on the joint roll arrangements with the States, will warrant a comprehensive implementation plan.[8]

2.7 ***Recommendation 1:***

> **that the AEC prepare a comprehensive implementation plan on the Committee's proposed measures to improve the integrity of the enrolment and voting process, and report back to the Committee by the end of 1997.**

Witnessing Requirement on the Enrolment Form

2.8 Section 98(2) of the Electoral Act requires that a claim for enrolment be witnessed by a person also entitled to enrolment. Section 342 of the Act provides that before signing a claim, a witness must satisfy him or herself that the statements in the claim are true. The penalty specified for a breach of section 342 is $1000.

2.9 The Liberal Party submitted that

> the witnessing requirement on enrolment forms [should] be tightened. Specifically, provision should be made for Justices of the Peace, Police Officers, Primary and Secondary School Headmasters and other notables to act as valid witnesses on enrolment forms. This would set a standard similar to that which applies for passport applications.[9]

2.10 The AEC has advised that a scheme similar to that advocated by the Liberal Party is possible, with the obvious proviso that the class of eligible witnesses must be sufficiently wide to ensure that no person qualified to vote could be expected to face difficulties in finding a witness.[10]

2.11 The Committee believes that the witnessing portion of the Electoral Enrolment Form should be upgraded into a proof of identity declaration, which could only be completed by a witness who falls into a prescribed class of persons similar to those eligible to sign passport applications. To allay possible concerns in Aboriginal communities the list of eligible witnesses should include members of Aboriginal community councils and other such bodies.

2.12 ***Recommendation 2:***

> **that as part of the implementation plan recommended above, the AEC nominate a prescribed class of persons eligible to complete the witnessing portion of the enrolment form if upgraded into a proof of identity declaration. The upgraded enrolment form should specify that a witness must be on the Commonwealth electoral roll (rather than merely eligible to be enrolled). Adequate provision should be made for identifiable groups of people who will face unusual difficulties in finding a witness.**

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8 Submissions pS1730; transcript pEM488

9 Submissions pS628. See also transcript pEM131 (Liberal Party)

10 Submissions pS1750

2.13 It should be noted that the Department of Immigration imposes a proof-of-identity requirement on new citizens, most of whom will fill in enrolment forms at their citizenship ceremonies (pages 13 to 14 refer).

Documentary Proof of Identity for Enrolment

2.14 In its comprehensive submission titled "Enrolment and Voting Identification", the AEC advised the inquiry of the documents required to establish proof of identity for a range of government programs.[11] The programs include those administered by the Australian Taxation Office (ATO), the Australian Transaction Reports and Analysis Centre (AUSTRAC, which administers the 100 point check set out in the Financial Transactions Reports Act), the Department of Social Security (DSS), the Department of Employment, Education and Youth Affairs (DEETYA), the Department of Veterans Affairs (DVA) and the Health Insurance Commission (HIC).

2.15 Most of these agencies categorise documents and require that a combination of documents of the appropriate categories be produced. However, there is no general agreement between the agencies on how specific documents should be categorised:

> The HIC rates a photographic driver's licence as a Group A document, whereas the DSS rates a driver's licence (photographic or non-photographic) as a secondary document. And whereas a birth certificate is accepted as a primary document under the FTR Act 100 point check method, a birth certificate is only considered a primary document by the DSS if it was issued more than five years ago, and the ATO considers all birth certificates as Category B documents.[12]

2.16 A proof of identity scheme does not necessarily require a categorisation of documentary evidence. For example, the Department of Foreign Affairs and Trade (DFAT) takes a more flexible approach in the issuing of passports:

> We do not specify absolutely what we will or will not accept as secondary proof [ie secondary to the proof of identity declaration] as our legislation allows us to seek such further evidence as we think fit...We do suggest that 'driver's licences, credit cards, rate notices, household accounts etc' would normally be acceptable.[13]

At least in the first instance, DFAT's more flexible approach is preferable to the categorisation method used by AUSTRAC, the ATO and the DSS.

2.17 Also, a proof of identity scheme should incorporate alternatives for specific client groups. For example, the DSS allows Aborigines and Torres Strait Islanders to produce "a reference from an Aboriginal and Torres Strait Islander organisation which shows your referee's full details and the amount of time they have known you" as a secondary proof of identity document.[14] "Towards Fairness and Equity", the government submission to the 1986 Joint Select Committee on an Australia Card, identified the following categories of persons who may have needed special registration arrangements: the frail aged; persons in

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11 Submissions ppS1742-57 & ppS1806-23
12 Submissions pS1744 (AEC)
13 Submissions pS1747 (AEC)
14 Submissions pS1748 (AEC)

institutions; some disabled persons; homeless or destitute persons; some Aboriginal and Torres Strait Islander groups; some ethnic groups; and persons in remote areas. For electoral purposes, Australians residing overseas could be added to this list.[15]

2.18 ***Recommendation 3:***

> **that the Electoral Act be amended to provide that an applicant for enrolment must produce at least one original item of documentary proof of identity, where such information has not been provided previously (that is, all enrolment transactions initially and new enrolments thereafter). Acceptable documents might include photographic drivers' licences, Birth Certificates or extracts, Social Security papers (such as notice or advice of a pension) or Veterans' Cards, Citizenship Certificates, passports, Medicare Cards, or a written reference for a limited range of clients unable to produce the above documentation.**

2.19 The Committee acknowledges that requiring originals of documents to be presented will limit the current "enrolment by mail" system, with a correspondingly greater load on AEC divisional office staff. This will necessitate the use of an additional enrolment agency such as Australia Post, as happens with passport applications. Alternative arrangements will also have to be devised for enrolments in remote areas.[16] Obviously these issues will need to be addressed in the implementation plan recommended at page 7.

2.20 Proof of identity for enrolment should be implemented before the additional burden of proof of identity for voting (or use of a voter card) is considered.[17] However, proof of identity for voting may have to be examined more thoroughly if the government supports the abolition of compulsory voting, as recommended in Chapter Three. Over time, without proof of identity at the polling place there may be the potential for regular non-voters to be identified and to have votes improperly cast in their names.[18]

Cross-checking of Electoral Data Against External Databases

2.21 A measure of particular interest to the Committee is cross-checking of electoral data against information held on other databases, such as those of Australia Post, Telstra, the DSS, the Department of Immigration and Multicultural Affairs, local government authorities, and State instrumentalities responsible for electricity, water and gas services, drivers' licences and motor vehicle registration.

2.22 During the inquiry the AEC was asked whether section 92(1) of the Electoral Act could be used to this end.[19] Section 92(1) states that:

> all officers in the service of the Commonwealth, all police, statistical, and electoral officers in the service of any State, officers

15 Submissions pS1772 (AEC)
16 Submissions ppS1764-9 (AEC)
17 see submissions ppS1775-99 (AEC)
18 Transcript ppEM201-2 (D.Freeman) & ppEM358-9 (W.Tuckey MP)
19 Submissions pS58 (M.Spill) & ppS2057-8 (AEC); transcript ppEM490-2 (AEC)

> in the service or any local governing body, and all occupiers of habitations shall upon application furnish to the Electoral Commission or to any officer acting under its direction all such information as the Electoral Commission requires in connexion with the preparation, maintenance or revisions of the Rolls.

2.23 The AEC advised that section 92(1) does not provide a sufficient legal underpinning for expanded data-matching, due to legal developments in relation to privacy and freedom of information. The possibilities for data-matching discussed here would therefore require legislative amendment.

2.24 According to the AEC the personal information held on the address-based Roll Management System (RMANS), and the ability to transfer and absorb data using the Australian Standards, make the electoral roll a valuable source for data-matching.[20] In 1995 the Australian Joint Roll Council[21] commissioned a study which received 75 responses from agencies willing to exchange data with the AEC.

2.25 Australia Post in particular is considered a major source of reliable data, given that it covers all of Australia and updates names and addresses via the mail redirect service. As advised by the AEC,

> Australia Post has invested a considerable amount of capital and research in acquiring appropriate technology to assist in maintaining an accurate database of names and addresses. Australia Post is confident that it can overcome privacy objections to the use of names which have been supplied in mail redirection notices for data-matching by the AEC, by including on the mail redirect form a statement informing the applicant that the data will be supplied to the AEC.[22]

2.26 If the Australia Post mail redirect service was used to provide information, the AEC would receive an estimated 65 to 70 percent of the names and addresses of householders who have moved.[23] Other possible sources of data include the Medicare database, electricity distribution agencies used in conjunction with Australia Post, DEETYA (particularly for persons in the 18-25 year age bracket), Births Deaths and Marriages data (which varies in usefulness from State to State), the DSS, the ATO, local government, the Department of Immigration and Multicultural Affairs, rental bond boards, motor registries, the Department of Veterans Affairs and Telstra. In this context it is worth noting that while the Electoral Act allows for roll information to be provided to the DSS and the ATO, and while other statutes require the AEC to produce such data on demand, currently no data is available to the AEC in return.

2.27 Privacy legislation rightly places considerable restrictions on data-matching exercises. While the Commonwealth *Privacy Act 1988* does not impose specific limits on the extent of personal information which can be collected or disclosed for the purpose of matching individuals on separate databases, the information collected by an agency must be necessary for, or directly related to, the purpose for which it is collected. That purpose must be a lawful

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20 Submissions pS1753

21 The AJRC is a consultative body consisting of representatives of the Federal and State electoral authorities.

22 Submissions pS1753

23 Submissions ppS1753-4 & pS1764 (AEC); transcript pEM143 (Liberal Party) & pEM489 (AEC)

purpose directly related to a function or activity of the agency, and the collection of the information must not intrude to an unreasonable extent upon the personal affairs of the individual. In addition, any data-matching program must have regard to the Data-Matching Guidelines issued by the Privacy Commissioner.[24] The Guidelines are a set of recommendations on the use of data-matching in Commonwealth administration.

2.28 Under the Guidelines, before an agency decides to participate in a new data-matching program it must consider the costs and benefits of such a program, and consider whether alternatives to data-matching could achieve similar results. Each agency participating in the program is required to take steps to widely publicise the program, and the Guidelines impose extensive requirements on agencies in terms of regular evaluation and reporting on the program to the Privacy Commissioner.

2.29 Given these responsibilities, any large-scale data-matching by the AEC would have significant resource implications.[25] However as noted by the AEC

> if the electoral roll featured enhanced proof of eligibility measures, then there would be the opportunity for additional use to be made of the electoral roll by agencies such as the ATO, AUSTRAC, DEETYA and DSS in minimising revenue loss through tax evasion and benefit fraud. Such additional use of the electoral roll might be seen as justifying the costs of implementing...proof of eligibility measures for enrolment.[26]

2.30 DEETYA has advised the AEC in similar terms:

> The issue of cost of any tightening of AEC [proof of identity] requirements should be considered in the light of the benefit to all agencies of an electoral roll of a far higher completeness and integrity.[27]

2.31 The Committee agrees with the AEC that a study should be conducted with a view to implementing an upgraded data-matching environment.[28] It believes the study should have the endorsement of, in particular, the Ministers for Administrative Services, Social Security, Immigration and Communications.

2.32 ***Recommendation 4:***

> **that in co-operation with relevant Commonwealth, State and Territory departments and agencies, the AEC conduct a study identifying costs, benefits, methods of implementation, and requirements for legislative amendment of the following options for the expanded matching of enrolment data:**
>
> **(a) manual provision of data in response to requests for information relating to individual enrolments;**

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24 Submissions ppS1756-7 & ppS1824-32 (AEC)
25 Submissions pS1757; transcript ppEM491-2 (AEC)
26 Submissions pS1771
27 Submissions pS1771 (AEC)
28 Submissions ppS2057-8 (AEC)

(b) bulk comparison of data held by the AEC and other departments and agencies;

(c) on-line connections between the AEC's Roll Management System (RMANS) and the computer systems of other government departments and agencies, enabling validation of data as an enrolment form is entered onto the system; and

(d) such other options as may appear as a result of the study to appear viable.

Verification of Citizenship

2.33 One area where greater cross-checking of data could prove beneficial is in resolving difficulties with electors born overseas. This was the subject of some controversy at the inquiry, with disagreement between Mr Bob Patching (the Returning Officer for the division of Rankin in Queensland) and the AEC.[29]

2.34 Mr Patching expressed concern about the reaction of AEC management to his evidence to the previous Electoral Matters committee's 1993 election inquiry. Mr Patching had described an informal practice he had implemented, whereby if someone ticked the citizenship box on an enrolment form but was born in a different country, he (Mr Patching) would fax the details to a contact in the Department of Immigration and Ethnic Affairs for checking. He was obliged to cease this practice due to uncertainty about the implications under the Privacy Act.[30]

2.35 While people who have acquired citizenship through naturalisation are asked on the enrolment form for their date of citizenship and citizenship number, Mr Patching informed the inquiry that

> AEC policy was that if an elector born in another country ticked the box that indicates they were Australian citizens the card was to be processed as acceptable on the basis of the signed declaration...Unfortunately the policy has never changed and it is still possible for a non Australian Citizen to enroll by merely ticking a box that indicates that they are an Australian citizen and leaving the box for citizenship number blank.[31]

2.36 The AEC made the point that "unilateral and unauthorised action" on the part of its employees is not an appropriate solution to policy problems, particularly in this case given the requirements of the Privacy Act and the complexities of citizenship law.[32] However Mr Patching's informal methods were adopted for a time by other Divisional Returning Officers (DROs), indicating an apparent concern at the coalface in the AEC. The Committee

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29 Submissions pS674 (A.McGrath), ppS1397-408, pS1412 (R.Patching), ppS1843-7 (AEC), ppS2081-2, ppS2092-3 (R.Patching) & ppS2374-5 (AEC); transcript pEM187 (A.Viney), ppEM240-1, ppEM244-55 (R.Patching), pEM281 (G.Johnson), ppEM295-6 (C.Hughes) & ppEM403-12 (AEC)

30 Joint Standing Committee on Electoral Matters, *The 1993 Federal Election* (November 1994) pp42-3

31 Submissions ppS1398-9

32 Submissions ppS1757-61; transcript pEM405

shares the view that in the case of citizenship through naturalisation, accepting an elector's declaration without supporting detail is not appropriate.

2.37 ***Recommendation 5:***

> **that the Electoral Act be amended to make clear that claims for enrolment from persons who state they have achieved citizenship through naturalisation under the *Australian Citizenship Act 1948*, but who do not provide a date of naturalisation or citizenship number, will not be accepted until such information has been verified by the AEC (see also Recommendation 4 on cross-checking of electoral data against external databases).**

2.38 On a more positive note, during 1995 the AEC and the Department of Immigration developed procedures to allow new citizens to enrol and vote immediately after the award of citizenship. Under the procedures, which were developed in response to recommendations of the Parliament's Joint Standing Committee on Migration[33], the Department of Immigration and Multicultural Affairs (DIMA) prints personalised enrolment application forms which are made available to all new citizens at their citizenship ceremony. AEC staff attend most large ceremonies to assist new citizens to fill in their enrolment application forms and to collect the forms upon completion.[34]

2.39 DIMA imposes a proof-of-identity requirement on new citizens, as explained by the AEC:

> Prior to a citizenship ceremony, a standard letter is sent to all citizenship candidates from the Department of Immigration and Multicultural Affairs [advising] the following: "You are required to bring this invitation letter to the ceremony as well as a form of identification (preferably photo included)".
>
> This advice is also contained in a publication entitled "Australian Citizenship Ceremonies - A Handbook for Local Government Authorities", issued by the Minister for Immigration and Multicultural Affairs to all Local Government Authorities responsible for the conduct of citizenship ceremonies. Local Government Authorities are advised to "ask candidates to bring along their notification letter to the ceremony as well as a form of identification (preferably with photograph) so that it can be verified that they are in fact the person acquiring citizenship."[35]

2.40 With the proviso that local government authorities should be required (rather than merely being "advised") to ask citizenship candidates to bring their paperwork and identification to citizenship ceremonies, the revised arrangements appear to be working effectively. The arrangements commenced on Australia Day, 26 January 1996 and will continue to be a feature of future ceremonies. In the period from 30 January to 30 June 1996 35 725 new citizen enrolment forms were processed, and according to the AEC:

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33 *Australians All:Enhancing Australian Citizenship* (September 1994) pp165-7

34 Submissions pS153 & ppS1757-61 (AEC); transcript ppEM13-4 (AEC) & ppEM212-3 (B.MacCarthy MP)

35 Submissions pS2374

> Indications are that between 85% to 90% of new citizens now complete their forms at citizenship ceremonies...The new arrangements have overcome previous difficulties, as proof of citizenship is now obtained before new citizens are enrolled.[36]

The Close of Rolls Period

2.41 Section 155 of the Electoral Act provides that the rolls for an election close seven days after the issue of the writ. This statutory period was introduced following the 1983 election, when the rolls closed the day after the election was called.

2.42 As was noted in Chapter One, at the 1996 election some 428 000 transactions (new and updated enrolments) were processed from the day the writs were issued. The AEC freely admits that detailed checking, before the election, of these late enrolments - particularly the new enrolments - is virtually impossible. Consequently the seven-day period is often called into question by those concerned about the integrity of the rolls.

2.43 New enrolments should cease on the day the writ is issued, while electors already on the roll should be given three days in which to notify changes of address. Suggestions that such measures must lead to less accurate rolls are unfounded - the AEC should extensively advertise the new requirements, and should move as quickly as possible to a continuous roll review based on effective data-matching and flexible habitation reviews.[37]

2.44 ***Recommendation 6:***

> **that section 155 of the Electoral Act 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.**

Subdivisional or Precinct Voting

2.45 In 1983 this Committee's predecessor, the Joint Select Committee on Electoral Reform, recommended that a voter be allowed to cast an ordinary vote at any polling place within his or her House of Representatives electorate (division), rather than being confined to a smaller subdivision.[38] Under the old system, electors who arrived at a polling place outside of their enrolled subdivision - even if the subdivision was within their "home" division - had to either make their way to the subdivision or cast an absent vote. Usually there were several polling places within a subdivision; at the 1983 election (the last before the introduction of division-wide ordinary voting) 85 percent of subdivisions had enrolments of greater than 5000, and 43.12 percent had enrolments of greater than 10 000.[39]

2.46 Concern is often expressed that division-wide ordinary voting has increased the potential for multiple voting, in that an elector's name is now on the rolls at all polling places

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36 Submissions pS1758
37 Submissions ppS1769-70 (AEC); transcript pEM28 (AEC), pEM283 (G.Johnson) & pEM487 (AEC)
38 *First Report* (September 1983) p123
39 Submissions pS1698 (AEC)

within a division. These concerns have led to calls for the reintroduction of subdivisional voting or the introduction of "precinct" voting, with an elector's name appearing on only one roll at one polling place.

2.47 Several submission writers cited the 1989 report of the *Inquiry Into the Operations and Processes for the Conduct of State Elections*, prepared for the NSW State government by former State Electoral Commissioner Mr Ron Cundy and the current Commissioner Mr Ian Dickson. Messrs Cundy and Dickson noted (with reservations) that

> Restricting electors to voting as ordinary voters at only one polling place could be expected to meet with a good deal of criticism. However, it is evident that the great majority of electors always vote at the same venue. In the Committee's opinion, any inconvenience imposed upon electors is outweighed by the benefit of virtually eliminating multiple voting.[40]

2.48 The AEC, however, opposes precinct voting for the following reasons:

(a) the extent of apparent multiple voting in the same name can already be identified, through the post-election scanning of multiple marks on the certified lists of voters. The AEC and unsuccessful candidates, and persons qualified to vote in the relevant election, have recourse to the Court of Disputed Returns (discussed further in Chapter Nine) if they have reasonable grounds for believing that multiple voting has exceeded the elected candidate's winning margin.

(b) It is questionable whether polling officials and scrutineers would have sufficient knowledge of the population in a precinct of even 500 to 600 voters (the smallest size of precinct proposed in evidence to the inquiry) to be able to identify attempts at personation.

(c) There would be a major impact on the efficiency of the flow of voters through polling places, which would show up as substantially increased waiting times when queuing to vote. As noted at page 66 queuing has been of regular concern to Electoral Matters committees.

(d) A substantial increase in declaration voting (namely, absent voting from those electors not voting at their designated precinct) could be expected, which would "have the potential to delay the finalisation of election results".[41]

2.49 There is some substance in these administrative arguments. However the ability to travel to every polling place within an electorate, recording votes against the same name, causes as much disquiet about the integrity of the system as any other factor.

2.50 While the AEC expressed a case against precinct voting, it made no detailed comment on the possibility of restoring subdivisional boundaries similar in principle to those in place before 1984.

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40 *Inquiry Into the Operations and Processes for the Conduct of State Elections* (February 1989) p31

41 Submissions ppS1790-4; transcript ppEM34-6, pEM78 & ppEM496-504

2.51 ***Recommendation 7:***

> **that as part of the implementation plan referred to at Recommendation 1, the AEC prepare a detailed proposal for the reintroduction of subdivisional voting for future Federal elections. The proposal should consider a corresponding public awareness campaign (so that people are aware they may be disenfranchised if they fail to advise the AEC of a change of address across a subdivisional boundary, even when remaining within the same division).**

Separate Inquiry on the Electoral Rolls

2.52 Dr Amy McGrath OAM is a historian and author who made several substantial submissions to the inquiry, dealing largely with the questions examined in this Chapter. One of her principal suggestions was that an immediate quasi-judicial inquiry be held into the role and structure of the AEC since its inception in 1984.[42]

2.53 The recommendations in this Chapter will address many of the concerns about the integrity of the electoral rolls. While there may be merit in an external review, such a review should not take place until the Committee's proposed measures are in place and can be assessed.

Multiple Voting - "Wilfully"

2.54 Section 339(1)(j) of the Electoral Act provides that a person shall not wilfully vote more than once at the same election. The penalty nominated in the Act is imprisonment for six months. Under the Commonwealth Crimes Act, however, it is possible for a court to apply a pecuniary penalty rather than a term of imprisonment.

2.55 After polling day the certified lists of electors are electronically scanned. Reports are produced showing the names of those electors against whom no mark is recorded (apparent non-voters) and the names of voters against whom more than one mark appears (possible multiple voters).

2.56 The AEC then writes to the electors in question. Often the replies will reveal instances where the name of an apparent non-voter can be matched with the similar name of an apparent multiple voter; that is, polling official error has resulted in the wrong name being marked off the certified lists.

2.57 Multiple markings are examined to determine whether referral to the Australian Federal Police (AFP) is necessary. Following the 1996 Federal election 302 cases of suspected dual or multiple voting (in AEC terminology "multiple" means more than twice)

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42 Submissions ppS647-8 (A.McGrath), pS1703 (AEC) & ppS2008-9 (A.McGrath); transcript pEM188 (A.Viney)

were referred to the AFP for investigation. As at February 1997 three convictions had been recorded.[43]

2.58 The AEC explained that the word "wilfully" in section 339 makes obtaining a prosecution for multiple voting extremely difficult:

> The implications of the presence of the word "wilfully" in section 339(1)(j) should not be underestimated in any examination of multiple voting investigations, prosecutions, and conviction rates. Effectively, if a suspect flatly denies that he or she voted more than once, then without any independently-sourced evidence of a suspect's deliberate intention to defraud the system...neither the DRO, the AFP, nor the Court can progress [the] case.[44]

2.59 ***Recommendation 8****:*

> **that in relation to multiple voting, the word "wilfully" be deleted from section 339(1)(j) of the Electoral Act.**

Public Availability of the Rolls

2.60 The public availability of the electoral rolls was criticised in evidence to the inquiry. Mr Allan Viney, former NSW State parliamentarian and convenor of a group called Scrutineers for Honest Elections, noted that

> In the old days you could go down to the Post Office if you wanted to see if you were on the roll. You could have a look. But the roll is hidden now. If you put the roll into the public domain and invite anyone [to see] that and they say, 'Hey that is not right, that guy does not live there', then you can let someone lodge an objection.[45]

2.61 The AEC has noted that objection action is "not an activity that has been taken up on a large scale by members of the public, civic organisations or political parties".[46] However one of the basic safeguards frequently cited by the AEC is that the electoral roll is a public document. As such, it is unacceptable that electors may have to travel to an AEC office - which in rural electorates can be hundreds of kilometres away - to view the rolls.

2.62 ***Recommendation 9:***

> **that electoral rolls for a division or subdivision again be made available for inspection in local libraries and Post Offices.**

Address-based Roll Management System (RMANS)

2.63 The electoral roll is maintained on the AEC's on-line Roll Management System (RMANS). RMANS contains the names and addresses of electors as well as historical records of changes of address.

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43 Submissions ppS2283-7 (AEC)
44 Submissions pS2276 & pS2279; see also transcript pEM37 & pEM422 (AEC)
45 Transcript pEM189
46 Submissions pS1739

2.64 In its report on the 1993 Federal election, the previous committee noted the difficulties in requiring documentary proof of address[47] and stated that

> A preferable means of improving verification of residence would be a major redesign of RMANS, so that individual addresses rather than electors' names become the basis for enrolment records. The AEC has been investigating such a redesign; it believes that RMANS could eventually be expanded to encompass a complete system holding national data on all land parcels (including known use, such as residential, park or commercial) against which addresses claimed for enrolment could be matched and, if not verified, further checked.
>
> Completion of such a redesign is still some time away, but the Committee nonetheless feels that an address-based system would prove to be a worthwhile advance on current practice.[48]

2.65 The conversion of RMANS to an address-based system is now complete. Under this system every address in Australia, both inhabited and uninhabited, will be recorded. In addition a land use code will be stored, so as to identify non-habitable addresses such as cemeteries, service stations and schools:

> One obvious advantage is that [this] system will detect any enrolment anomalies. For example if an elector were to enrol in an address that was non-habitable, the system would provide appropriate information to the operator and ensure follow up action was undertaken. Similarly if a large number of electors were to enrol in a single dwelling then the system would indicate a possible problem. The address based system represents a significant technical development for improving the quality of the enrolment database, and is an essential pre-requisite for any large-scale data-matching.[49]

2.66 While there were some questions raised at the inquiry about the system and the tendering processes used by the AEC[50], the Committee welcomes the address-based system as a significant step forward. Welcome news also is that the AEC and South Australia, which has maintained its own electoral roll system, are working towards achieving a truly national roll system through the transfer of the State's electoral data onto RMANS.[51]

Continuous Roll Review

2.67 Under current procedures, electoral roll reviews tend to be concentrated over a very short period of time, typically three months every two years. The previous committee questioned the efficiency of this procedure and recommended first, that section 92 of the Electoral Act be amended to allow more flexibility in the timing of roll reviews, and second, that the AEC pilot a continuous roll review in a number of divisions.[52]

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47 see also submissions ppS1762-4 (AEC)

48 *The 1993 Federal Election* p41

49 Submissions pS1752 (AEC); see also transcript ppEM489-90 (AEC)

50 Submissions ppS80-1, pS84 (A.Viney), pS411, pS644 (A.McGrath), pS1700 (AEC), pS2010 & pS2013 (A.McGrath); transcript pEM164 (A.McGrath) & ppEM186-7 (A.Viney)

51 Submissions pS152 & pS1751 (AEC)

52 *The 1993 Federal Election* pp46-8. Submissions pS2379 & ppS2394-413 (AEC); transcript ppEM252-3 (R.Patching) & ppEM492-3 (AEC)

2.68 The relevant amendments to the Act are now in place, and the continuous roll updates have been trialed in a number of places in Queensland. The final report of the trial is to be submitted to a June 1997 meeting of the Australian Joint Roll Council. The AEC will then consider how the program can be implemented nationally, something the Committee will be keeping under review.

Investigation of Offences

2.69 The inquiry took evidence on the penalties applied to electoral offences and the investigation of offences by the AFP. This evidence was largely taken in the context of campaigning practices and therefore is examined in Chapter Seven (Election Campaigning).

Objection Action

2.70 Part IX of the Electoral Act contains procedures for the removal of a name from the rolls following objection action. A person enrolled for a division may object to the enrolment of another person for that division, and a DRO is required to object to a person's enrolment for the division, if there are reasonable grounds for believing that the challenged elector is not entitled to be enrolled for the division.

2.71 Once a DRO has decided to proceed with objection action a notice of objection is sent to the challenged elector. If a satisfactory response is not received within 20 days, the DRO is required to determine the objection. Having done so, the DRO sends the elector a written "notice of determination", usually to the effect that the elector's name has been removed from the roll.

Objection Action After the Issue of the Writ

2.72 Section 118(5) of the Electoral Act prevents a DRO from removing a name from the roll between the issue of the writ and the close of polling, even though the DRO has already determined that the name should be removed.[53] This provision dates from before 1983, when it was possible for the rolls to close the same day the writ was issued.

2.73 While the government agreed with the previous committee[54] that section 118(5) should be amended to allow a name to be removed up to the close of rolls, the amending legislation lapsed when the 37th Parliament was dissolved.

2.74 ***Recommendation 10:***

> **further to Recommendation 6, that section 118(5) of the Electoral Act be amended to provide that the period during which a Divisional Returning Officer cannot remove a name from the roll following objection action commences at the close of rolls.**

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53 Submissions pS58 (M.Spill) & pS1466 (AEC); transcript ppEM30-1 & ppEM482-3 (AEC)

54 *The 1993 Federal Election* p55

Objection Action - Change of Address

2.75 If during an electoral roll review it is discovered that an elector has left his or her enrolled address (and the new address is not known), objection action is initiated by the AEC on the assumption that the elector has left the division. Mr Donald Campbell, the DRO for the division of Gellibrand in Victoria, submitted that

> this election has shown that electors are confused by the anomalous requirements to re-enrol. If they move to an address within the same electorate, they must re-enrol within 21 days...But if they move to a different electorate, they must wait one month and then re-enrol within a further 21 days.[55]

2.76 Mr Campbell argued that there should be a uniform set of requirements so that one month after changing address, anywhere in Australia, electors are required to re-enrol within a further one month.

2.77 Conversely, Mr Allan Viney argued that the 30 day wait for re-enrolment in another division is needlessly complicated:

> Why do we not make it instinctive that the moment a person changes their address it is understood as part of their community responsibility that they notify the electoral authorities, 'I have changed my address and this is the new one'?...why not simplify the situation and say, 'you have up to 30 days to notify the change of address'?[56]

2.78 The Committee agrees with Mr Viney. Also, the AEC could take greater advantage of the documentation sent out by various bodies (electricity, other utilities, local government etcetera) to persons who have changed address.

2.79 ***Recommendation 11:***

> **that a) sections 95, 99 and 101 of the Electoral Act be amended so that electors are required to re-enrol within one month of changing address anywhere in Australia and b) the AEC be empowered to negotiate with utilities and local government so that documents sent out by those bodies, to persons who have changed address, include reminders to change enrolment details.**

2.80 Mr Campbell renewed a further recommendation he had made to the previous committee, to the effect that the basis for enrolment and objection action should be address rather than division.[57] At the last Federal election thousands of voters who had not notified the AEC of their new address, but had remained within the same division, would have had their provisional votes (see page 53) excluded under Mr Campbell's proposal. The Committee is not satisfied that this is appropriate, and therefore agrees with its predecessor that while the basis for public education should certainly be that people notify the AEC if they

55 Submissions pS1328
56 Transcript pEM184
57 Submissions ppS1327-9 (D.Campbell) & pS1503 (AEC); *The 1993 Federal Election* p57

change address, change of subdivision rather than address should continue to be the basis for objection action.[58]

2.81 The question of whether electors who fail to update their address details should be entitled to reinstatement on polling day was the subject of some discussion in the Court of Disputed Returns, during proceedings for the Snowdon petition.[59] The Snowdon petition and election litigation are discussed further in Chapters Four and Nine.

Objection Action - Unsound Mind

2.82 Following the 1993 election the previous committee noted that procedures for getting someone of unsound mind, for example an elderly person afflicted by senile dementia, off the electoral roll were excessively bureaucratic and insensitive.[60] In response to representations from the AEC and Mr Donald Campbell, the committee recommended that the standard $2.00 refundable fee for lodging an objection not be required in the case of unsound mind, and that an objection on the ground of unsound mind need not come from an elector enrolled in the same division as the challenged elector.

2.83 Mr Campbell has renewed a further recommendation of his that the prohibition in the Act on DROs lodging unsound mind objections should be removed.[61] However the Committee believes that unsound mind objections are best left to relatives and medical practitioners, and agrees with the AEC that the previous committee's recommendations aside, the existing provisions should not be amended.

Objection Action - Roll Deletions in Western Australia

2.84 In its report on the 1993 election the previous committee noted that

> Several witnesses advised the Inquiry that objection action relies too heavily on mail deliveries getting through to a residential address, with a disproportionate impact on electors in remote areas. This is because there is no street delivery of mail in many rural and remote areas. As such, mail sent by the AEC or political parties to a residential address will often be returned to sender, and will thereby become the trigger for objection action.[62]

2.85 The complaints in question came from Western Australian members of State and Federal parliaments (the rolls prepared by the AEC are also used for State and Territory elections under joint roll arrangements). At the 1996 election inquiry the same issues were raised by the Northwest Members of the Western Australian (WA) Parliamentary Labor Party.[63] Mr Fred Riebeling MLA on behalf of the Northwest Members stated that:

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58 *The 1993 Federal Election* p57

59 Submissions pS202 & pS1660 (AEC); transcript ppEM79-80 (AEC), ppEM447-8, ppEM452-4 (D.Melham MP), ppEM460-2, pEM464 & pEM466 (AEC)

60 *The 1993 Federal Election* pp55-6

61 Submissions ppS1329-30 (D.Campbell) & pS1503 (AEC). See also submissions pS376 (D.Moloney)

62 *The 1993 Federal Election* p52

63 Submissions ppS685-9 (Northwest Members of the WA Parliamentary Labor Party), ppS1500-2 & ppS1956-7 (AEC); transcript ppEM369-87 (Northwest Members) & ppEM396-8 (AEC)

> greater effort should be made to make sure that people that are being removed have actually left the area. I think a system could easily be set up prior to removal from the electoral roll so that certain checks are made through areas such as the post office, Aboriginal communities, me or the local member of parliament and, in my area specifically, through major [mining] companies as well.[64]

2.86 The Northwest Members urged the Committee to reject calls for an upgraded witnessing requirement and proof of identify for enrolment. However, the Committee has already stated that persons in remote areas will need to be considered if such measures are introduced. This is a quite separate issue from the mechanics of the objections process.

2.87 As for the specific complaints about roll deletions in Western Australia, the AEC has responded first, that each month the Western Australian Electoral Commission provides State members with a disk containing enrolment transactions (on and off) which would enable the members to notify the AEC of errors; second, that objection and determination notices are sent to postal addresses where different to residential addresses; third, that the AEC will make a minimum of three attempts to contact someone before they are removed from the roll; and finally, that it is "rare for an elector to be reinstated on the Roll for the same address that he or she was removed from".[65] As the AEC notes, the task of keeping an accurate roll would be simplified if all electors formed a habit of routinely notifying the AEC of a change of address.

64 Transcript pEM370
65 Submissions pS1502

CHAPTER THREE

PREFERENTIAL AND COMPULSORY VOTING

Compulsory Voting

3.1 Compulsory voting was first introduced in Australia in 1915 by the conservative government of Queensland. In following years, the turnout under non-compulsory voting at Federal elections declined from a peak of 78.1 percent in 1917 to 57.9 percent in 1922. As explained by the AEC,

> The two principal power blocs in the federal Parliament agreed privately that compulsory voting was becoming an increasingly attractive option for federal elections in the light of the Queensland experiment, but neither side of politics wanted to be seen as the author of such a fundamental change to the political system.
>
> In the event, an agreement was made behind closed doors, and a Private Member's Bill to introduce compulsory voting for federal elections was passed in record time (about three hours) through the House of Representatives and the Senate...At the 1925 federal election voter turnout increased dramatically to 91.3%, and since that time [it has] never fallen below 90%.
>
> Compulsory voting has remained in force for federal elections for the past 72 years with bipartisan support.[66]

3.2 A person who does not vote at a Federal election is guilty of an offence and must pay a penalty of $20.00, unless he or she can provide to the relevant DRO a reason which must be "valid and sufficient". Failure to pay the penalty may lead to court proceedings and a fine of up to $50.00 plus court costs. After the 1993 Federal election at least 43 non-voters who failed to pay fines thus imposed received sentences of one to two days in prison, under State laws proscribing contempt of court and non-payment of fines.

3.3 The inquiry received several submissions on Australia's system of compulsory voting.[67] The tenor of most of them is reflected in the words of a Mr CGW Hughes:

> the compulsion to attend a polling booth, on threat of financial penalty, does not reflect a free vote. The right to vote is a privilege, to be exercised after due diligence and consideration, of the candidates. Should...there be no suitable

66 Submissions pS196

67 Submissions pS04 (CGW.Hughes), ppS16-9 (M.Doyle), ppS196-7 (AEC), pS272 (I.Farrow), pS349 (B.Joy), pS618 (D.Freeman), ppS633-5 (R.Johnston MP), pS638 (E.Cameron MP), pS648, pS651 (A.McGrath), pS665 (J.Rydon), ppS905-13, pS1496 (AEC), ppS1865-6 (B.Martin), ppS2133-41 (E.Patridge), ppS2145-50 (J.Romanowski) & pS2370 (J.Guest); transcript ppEM68-70 (AEC), pEM135 (Liberal Party), ppEM169-70 (A.McGrath), ppEM198-9, ppEM201-4 (D.Freeman), pEM271 (Qld Branch of the ICJ), pEM296, ppEM298-9 (C.Hughes), pEM358 (W.Tuckey MP), pEM421 (AEC), pEM455 (D.Melham MP), pEM460 & ppEM502-3 (AEC)

> candidate presenting for election, the compulsion to attend a polling booth has no democratic standing.[68]

3.4 This opinion is shared by the Committee. First, just how far the compulsory "voting" requirement extends is by no means clear.[69] As an elector, all one can say with confidence is that it is compulsory to have one's name marked off the rolls and to receive ballot papers. Dr Amy McGrath OAM has noted that in effect it is only the fine for failing to vote that is compulsory, rather than the voting itself:

> It is a system that rewards the dishonest, and punishes the honest. The dishonest electors...turn up at the polling booth to have their names marked off and are thereby seen to have done their 'duty' even if they voted informal or threw their vote away. The honest [elector], who stays away out of conscience, is punished.[70]

3.5 In his second reading speech, the Senator responsible for the 1924 private member's Bill (Nationalist Senator Herbert Payne, Tasmania) predicted that within "a short time" of the introduction of compulsory voting, there would be a "wonderful improvement" in the political knowledge of the Australian population. As demonstrated in a national survey conducted in 1994 by ANOP, compulsory voting has singularly failed to achieve this aim. The results of the survey were published in the Report of the Civics Expert Group established by the former government in 1995. The report stated that the survey results

> indicate widespread ignorance and misconception of Australia's system of government, about its origins and about the way in which it can serve the needs of citizens.
>
> On nearly all subjects the national civics survey found a minority of informed citizens. The majority admitted scant knowledge and their actual understanding was often lower than they professed.[71]

3.6 Some of the specific survey results were:

- only 40 percent could name the two Federal Houses of Parliament;
- only 24 percent knew that Senators are elected on a State-wide basis;
- only 19 percent had some understanding of federalism;
- only 18 percent knew something about the content of the Constitution; and
- 60 percent did not know how the Constitution can be changed.

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68 Submissions pS04

69 see A.Twomey, "Free to Choose or Compelled to Lie? - The Rights of Voters After *Langer v the Commonwealth*", *Federal Law Review* v24(1) 1996; included in submissions ppS898-917 (AEC). See also M.Healy & J.Warden, *Compulsory Voting* (Parliamentary Research Service Research Paper No.24 1994/95) April 1995, & G.Orr, "The Choice Not to Choose: Commonwealth Electoral Law and the Withholding of Preferences" (accepted as Exhibit no.1)

70 Submissions pS651

71 quoted in *The Parliamentarian*, July 1996 p244 (debate on compulsory voting between Senators G.Jones & N.Minchin)

3.7 An argument that the legitimacy of Australian election results would be undermined by voluntary voting is difficult to sustain, given that virtually every other democracy in the world manages without compulsion. Cyprus and Nauru are the only other Commonwealth democracies that compel citizens to vote. Other democracies that make it an offence not to vote include Belgium, Greece, Luxembourg and Venezuela. Some form of compulsory voting also exists in Costa Rica, Singapore, parts of Switzerland and Uruguay.[72]

3.8 While the low turnouts in United States presidential elections are frequently cited by opponents of voluntary voting (the turnout at the 1996 presidential election was 49 percent of all persons eligible to enrol), there are factors at work in the US that are unique to that country, such as the frequency and multiplicity of elections, the weakness of the party structure, the "gridlock" occasioned by the complete division of executive and legislative functions, and the use of a first-past-the-post voting system. This range of circumstances does not apply in Australia, nor in most Western democracies with voluntary voting. New Zealand's turnout is typically in excess of 85 percent (and was 88 percent at the October 1996 national election), Holland's (since the end of compulsory voting there in 1970) 83.7 percent, France's 79 percent, Germany's at the 1994 elections 79 percent, and Britain's at the 1992 elections 77.7 percent.[73]

3.9 An AGB-McNair survey published in *The Sydney Morning Herald* of 9 November 1996 found that 88 percent of Australians would be "likely" or "very likely" to vote if voting were to be made voluntary. If the health of a democracy is to be judged by the level of voter turnout, in Australia there would seem to be no reason to fear voluntary voting.

3.10 It should also be noted that the low turnouts in the US notwithstanding, no-one in that country is advocating compulsory voting as the solution. Such a proposal would rightly be seen as an attempt to disguise, rather than deal with, a lack of public confidence in the system of government.

3.11 Contrary to the argument put by some that political campaigning would be debased under voluntary voting (an argument again based on the largely irrelevant US experience), former ALP pollster and campaign strategist Mr Rod Cameron has expressed the view that voluntary voting would result in a greater focus on mainstream issues, as parties could not afford to concentrate on scaring swinging voters away from their opponents. Mr Cameron informed a Senate select committee that

> if you did not have compulsory voting, you would have a higher level of political debate and political advertising generally because you could actually talk policy.

3.12 As explained by Mr Cameron, political advertising must currently appeal to the emotions of the "lowest common denominator", that part of the electorate who without compulsion "would not vote in a month of Sundays".[74]

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72 Healy & Warden p27

73 *The Parliamentarian* op cit p246; Healy & Warden pp33-44 and Attachments; G.Newman, *Voter Turnout* (Parliamentary Library Information Research Services, Research Note No.29 February 1997)

74 see Senate Select Committee on Political Broadcasts and Political Disclosures, *Political Broadcasts and Political Disclosures Bill 1991* (November 1991) pp33-4

3.13 To date the major parties have conspired to use the law to do what in virtually every other democracy the parties themselves must do - namely, maximise voter turnout at elections. However with all parties suffering long-term declines in their membership and support bases, the need to maximise turnout under voluntary voting could act as a major motivation to local political activity. Similarly, the parties would not be able to neglect voters in "safe" seats to the extent they currently do. Typical election efforts by the parties focus on the swinging voters in about 30 of the 148 House of Representatives seats. Those voters represent about seven percent of the total voting population. The overwhelming majority of Australians thus have little contact before polling day with the democratic process, a situation that could only improve under voluntary voting.

3.14 British studies of voter turnouts suggest that non-voting is essentially a function of lack of interest in the process, rather than class or income. There is no evidence from those studies to suggest that voluntary voting somehow disenfranchises the poor and underprivileged. There is also no conclusive evidence that differential turnouts of themselves are likely to affect election outcomes, although this may be possible in close elections. Studies in the US suggest that even if turnouts had been close to 100 percent, the results of recent presidential elections would not have been altered.[75]

3.15 As noted by Mr Graeme Orr of Griffith University, two High Court challenges to the compulsory voting provisions of the Electoral Act have failed:

> In *Judd v McKeon*, a socialist, who chose not to vote at a Senate election because he was trenchantly opposed to all the nominated candidates...had his conviction upheld. Only Higgins J accepted that conscientious political reasons...could justify not voting...
>
> Similarly, in *Faderson v Bridger*, an elector argued that his failure to vote was motivated and excused by a lack of any genuine preference between the candidates, since to mark a preference that he did not have would have been a form of lying. His conviction for not voting was upheld. Barwick CJ, in the leading judgement, held that to have no preference is not to be in a position where one cannot do one's legal duty...the judgements in *Judd's* case and *Faderson's* case do not seek to justify the compulsion to vote, but accept it as a political fact or axiom reflecting a Parliamentary dictate forcing voters to choose those candidates who they feel are the least worst representatives, with no room to opt-out for those who conscientiously cannot make such distinctions.[76]

3.16 If Australia is to consider itself a mature democracy, compulsory voting should be abolished. The assertion that voting is a "right" means little if one can be imprisoned for conscientiously choosing not to exercise that right - or rather, for conscientiously exercising the right not to vote.

3.17 ***Recommendation 12:***

> **that section 245 of the Electoral Act and section 45 of the Referendum Act, and related provisions providing for compulsory voting at Federal elections and referenda, be repealed. In the interests of effective management of the electoral system and**

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75 *The Parliamentarian* op cit p246

76 G.Orr pp4-5

maintaining accurate records of turnout, compulsory enrolment should be retained.

Albert Langer and Section 329A of the Electoral Act

3.18 The inquiry received several submissions in relation to the full preferential voting requirements for the House of Representatives.[77] Many of the submissions were made in response to Mr Albert Langer's imprisonment during the 1996 election.

3.19 The background to the Langer affair, and possible solutions to the issues raised, are examined below.

The Preferential Voting Provisions of the Electoral Act

3.20 Section 240 of the Electoral Act prescribes full preferential voting for House of Representatives elections. The section reads as follows:

> 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.

3.21 However, to preserve the franchise of voters who miss a square or repeat a number when marking the ballot paper, section 270(2) of the Act provides that where there are at least three candidates, a House of Representatives vote is still formal if:

- there is a "1" against the name of one candidate, and
- there are numbers in all the other squares, or all the other squares except one left blank. Any number that is repeated is disregarded in the counting of preferences.[78]

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77 Submissions pS04 (CGW.Hughes), ppS05-6 (N.Forbes), pS16, ppS20-1 (M.Doyle), ppS29-32 (B.Cox), ppS34-5 (P.Boyle), pS39 (S.Gilchrist), pS83 (A.Viney), ppS89-91 (Qld Branch of the ICJ), ppS92-5, ppS96-106 (C.Hughes), ppS137-8, pS178, ppS211-2 (AEC), ppS271-2, pS275 (I.Farrow), pS296 (P.Crayson), ppS312-4 (D.Blair), pS440, ppS563-70 (ALP), ppS618-20 (D.Freeman), pS630 (Liberal Party), pS638 (E.Cameron MP), pS643 (D.Randall MP), ppS664-6 (J.Rydon), ppS692-1055 (AEC), pS1876, ppS1880-4 (Proportional Representation Society of Australia) & pS2147 (J.Romanowski); transcript pEM5, ppEM9-10 (AEC), ppEM106-7 (ALP), pEM134 (Liberal Party), pEM196, ppEM202-4 (D.Freeman), ppEM267-71, pEM275, pEM277 (Qld Branch of the ICJ), pEM290, pEM298 (C.Hughes), ppEM306-14 (D.Randall MP), pEM358 (W.Tuckey MP), ppEM414-6 (AEC) & ppEM453-4 (D.Melham MP)

3.22 At the 1987 and 1990 Federal elections, there were instances of electors being encouraged to take advantage of section 270 to deliberately cast their votes in a manner that would effectively allow optional preferential voting. For example, a vote of "1, 2, 2, 2..." is still a formal vote under section 270(2) of the Act. As all markings of "2" are disregarded because the "2" is a repeated number, the voter has effectively registered a first preference only.

3.23 In 1990 the AEC advised this Committee's predecessor that the practice described was contrary to the underlying intention of section 270 - namely, to provide a safety net for voters who make a genuine mistake in marking preferences on the ballot paper. The committee recommended in its report *1990 Federal Election* that

> section 329(3) of the *Commonwealth Electoral Act 1918* be amended to include a general prohibition on the distribution of any material which discourages electors from numbering their ballot paper consecutively and fully

and

> the Australian Electoral Commission report to the Joint Standing Committee on Electoral Matters on possible changes to the *Commonwealth Electoral Act 1918* that would have the effect of minimising the incidence of optional preferential voting.[79]

3.24 Section 329A of the Electoral Act was enacted in December 1992, and came into force for the first time at the issue of the writs for the 1993 Federal election. Section 329A makes it an offence to encourage, during the election period, voters to fill in House of Representatives ballot papers other than in accordance with the method set out in section 240 of the Act. While the offence is punishable by imprisonment for six months, under the Crimes Act it is possible for a court to apply a pecuniary penalty rather than a term of imprisonment.

"How to Vote for Neither!" - the Albert Langer Campaign

3.25 At the 1993 election, veteran Melbourne activist Mr Albert Langer indicated that he intended to run a campaign advocating informal voting and optional preferential voting. After receiving warnings from the AEC, on 5 March 1993 he applied to the High Court for a) an injunction to prevent the AEC from "intimidating" him and b) a declaration that section 329A was unconstitutional. The High Court dismissed his injunction application, but referred the constitutionality of section 329A to the Full Bench. The case was listed with the Muldowny case, which was a similar challenge to South Australian State electoral law.

3.26 As explained by the AEC,

> To the extent that the AEC understands Mr Langer's position (as put by him to the courts in numerous verbal and written submissions), he maintains that full preferential voting, as it has existed for the House of Representatives since 1918, is a political strategy, maintained through electoral legislation by the major political parties in the Parliament, to reduce the chances of minor parties and independent candidates being elected to Parliament.

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78 See submissions ppS712-27 (AEC) for a history of the formality provisions of the Electoral Act.

79 *1990 Federal Election* (December 1990) p42

> Mr Langer's frequently stated view is that the Australian Labor Party (ALP) and the AEC are somehow in league to prevent the formation of a democratically elected Australian Parliament - an allegation that the AEC categorically denies. Mr Langer alleges that the AEC has colluded with the ALP to keep the rate of informal voting as low as possible, apparently in order to favour the ALP. Mr Langer further alleges, that as optional preferential voting is more likely to deliver minor parties and independent candidates to the House of Representatives, the AEC has colluded with the ALP to resist its introduction.[80]

3.27 Mr Langer argued before the courts that a proper construction of section 240 of the Act would allow optional preferential voting. This apparently follows from the requirement, in section 24 of the Constitution, that Members of the House of Representatives be "directly chosen by the people". According to Mr Langer, if section 240 of the Act is to be construed as only allowing full preferential voting then it does not satisfy the constitutional requirement, and by implication nor does section 329A.[81]

3.28 On 7 February 1996 the High Court decided that section 329A is a valid enactment of the Parliament. The High Court decision establishes that:

- a compulsory system of full preferential voting is constitutionally valid;
- section 240 of the Electoral Act requires that a voter mark the ballot paper by writing consecutive, unrepeated numbers commencing with the number "1" to indicate an order of preference among all the candidates whose names appear, but sections 268(1)(c) and 270(2) of the Act have the effect that certain ballot papers which do not satisfy this requirement will nevertheless be included in the scrutiny; and
- section 329A is a valid enactment of the Parliament as it prohibits conduct which has the tendency to undermine the system of full preferential voting prescribed by section 240; and section 329A does not infringe the implied constitutional freedom of communication in political matters.

3.29 On this last point, in a series of cases commencing in 1992 the High Court has held that an implied freedom of political communication derives from the system of representative government established and maintained by the Constitution. However the implied freedom is not absolute. According to the majority judges in the Langer case (Dawson J dissenting), although section 329A restricts freedom of speech it is not thereby invalid, as it is directed to the legitimate purpose of protecting the method of voting prescribed by section 240 rather than to repressing freedom of political discussion.[82]

3.30 On 8 February 1996 the AEC obtained an injunction from the Victorian Supreme Court to restrain Mr Langer from continuing to breach section 329A (writs for the Federal election had been issued on 28 January). Among other activities, on 31 January Mr Langer had published a newspaper advertisement headed "How to Vote for Neither!". The advertisement advocated a "1, 2, 3, 3" vote, with the major parties placed last. Mr Langer

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80 Submissions ppS700-1
81 Submissions pS701 (AEC)
82 Submissions pS791 (AEC)

also appeared on Sydney radio to further advocate the method of voting set out in the advertisement.

3.31 On 14 February the Victorian Supreme Court sentenced Mr Langer to prison until 30 April 1996 for defying the injunction. As explained by the AEC, there seems little doubt that Mr Langer was determined to force the issue:

> immediately [following the granting of the injunction], Mr Langer invited Mr Stephen Lucas of the Australian Government Solicitor, representing the AEC, to accompany him outside to see what he was about to do. Mr Langer then crossed the road outside the court and distributed his pamphlet "How to Vote for Neither!" to a group of people including journalists and photographers, in wilful defiance of the injunction just ordered against him. The next day his action was widely reported in the newspapers.[83]

3.32 Following an appeal against the terms of the contempt order, Mr Langer's sentence was reduced and he was released from prison on 7 March 1996. The AEC has noted that Mr Langer's imprisonment led to widespread calls for the repeal of section 329A, and unwarranted criticism of the AEC:

> The conduct engaged in by Mr Langer at the 1996 federal election was precisely that which the Parliament sought to prohibit by enacting section 329A. Contrary to the opinion of many commentators, the AEC was not able to invoke a discretion in invoking section 329A, because it might be viewed by some as a "bad" law, or because there was the prospect of making a martyr out of Mr Langer. There are no "bad" laws or "good" laws which can be selectively applied by responsible agencies. The AEC has a duty to uphold the laws of the Commonwealth as enacted by the Parliament, and did so impartially and appropriately in Mr Langer's case.[84]

3.33 The public outcry over the use of section 329A against Mr Langer included condemnation from Amnesty International, the International Commission of Jurists, the Human Rights and Equal Opportunities Commission and others. Amnesty alleged that the imprisonment was a breach of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and saw fit to describe Mr Langer as "Australia's first prisoner of conscience for over 20 years".[85]

3.34 The Langer affair has clearly shown that section 329A of the Electoral Act is an ineffective and heavy-handed provision. To vote informally, or to vote formally but according to the Langer method, is not illegal. It is therefore highly objectionable that someone can risk imprisonment for advocating such a vote. Also, the use in section 329A of the word "advocate" would seem to open a large loophole to avoid sanction, as noted some years ago by the AEC:

> any attempt...to prohibit persons <u>in any way</u> inducing voters to mark their ballots "1, 2, 2, 2 etc" is likely to lead to a situation where, on the face of it, it could be an offence to explain a provision of the Commonwealth Electoral Act.

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83 Submissions pS804

84 Submissions pS697

85 C.Field, *'Tweedledum and Tweedledee 1,2,3,3' - The Albert Langer Story* (Parliamentary Research Service Current Issues Brief n.14 1995-96) April 1996 p8

> For example, if the text of s.270 of the Act were read on radio, and the interviewer were to ask "does this mean that I can vote 1, 2, 2, 2 and my vote will be counted as a formal vote for the candidate of my choice?" the answer has to be "yes". It is difficult to see where the law could draw the line between simply explaining section 270 and inducing voters to cast an optional preferential vote. If such a distinction were to be drawn, its enforcement would seem problematical, particularly in the heat of an election campaign.[86]

3.35 On the other hand, someone as determined as Mr Langer to become a martyr can very effectively exploit section 329A, to gain invaluable publicity for the hitherto obscure forms of optional preferential vote that are admissible under section 270(2).

3.36 Figures showing a dramatic increase in exhausted voting levels at the 1996 election were provided by the AEC. Exhausted votes are those saved from informality by section 270; that is, the ballot papers are accepted as formal but a preference distribution cannot be completed (to either of the two highest-placed candidates) because of missing or repeated numerals. At the 1993 election the number of exhausted House of Representatives votes was 7325 (0.07 percent of the vote). At the 1996 election this figure increased spectacularly to 48 979 (0.42 percent of the vote, or a sixfold increase). A comprehensive analysis by the AEC of exhausted voting levels shows that of the 46 792 formal exhausted votes surveyed, 41 526 were exhausted because of the repetition of numbers.[87]

Integrity of the Preferential Voting System - Solutions

3.37 The AEC advised the inquiry that the continuing existence of section 329A is

> likely to cause major problems at future federal elections, as an increasing number of citizens wilfully defy the law and the AEC is obliged to launch injunctions and/or prosecutions across the country during the heat of the election campaign period. The potential for bringing the federal electoral system and the AEC into public disrepute is significant...
>
> However, if section 329A alone were to be repealed, the effect would be to remove the major obstacle to advocating optional preferential voting at federal elections. This would send a clear signal that Parliament now accepted in principle that optional preferential voting should exist as an alternative to full preferential voting for federal elections, although the [Commonwealth Electoral Act, or] CEA does not clearly state as much. The question must then arise as to why Parliament does not expressly provide for optional preferential voting in the CEA, rather than allowing it to exist only as a "loophole" under section 270.
>
> If Parliament were to repeal section 329A without also expressly providing for optional preferential voting, public confusion about the real intentions of the legislators on the method of voting required under the CEA can be expected

86 Joint Standing Committee on Electoral Matters, *Ready or Not: Refining the Process for Election '93* (December 1992) Appendix 7. See also transcript pEM307 (D.Randall MP)

87 Submissions pS709, ppS865-80 & ppS1192-326 (AEC). The figures quoted in the last sentence do not include figures for the divisions of Lindsay, Moore and the Northern Territory, as these results were the subject of Court of Disputed Returns challenges at the time the exhausted voting statistics were provided to the inquiry.

> to increase under the pressure of well-organised public campaigns in support of optional preferential voting.[88]

3.38 The AEC believes that the only practical options are: a) reinforce the Electoral Act to support full preferential voting by repealing both section 270(2) and section 329A, or b) amend the Act to explicitly provide for optional preferential voting. The AEC in fact suggested that the Committee seek a separate inquiry reference on whether optional preferential voting should be introduced. Former Electoral Commissioners Mr Brian Cox OBE MVO and Emeritus Professor Colin Hughes also suggested that consideration should be given to optional preferential voting.

3.39 There is no need for a separate inquiry into optional preferential voting. While electors should not be compelled to cast a vote, the effects of non-compulsory voting should be assessed in detail before changes are made to the full preferential voting system.

3.40 Instead, sections 270(2) and 329A of the Electoral Act should be repealed. The little-mentioned section 329(3) of the Act should also be repealed, as its legislative intention is identical to that of section 329A. The only effective difference between the two provisions is that section 329A applies to "any matter or thing" and makes direct reference to section 240, whereas section 329(3) applies to "purported representations of ballot papers" (such as how-to-vote cards) and makes direct reference to the instructions on the ballot paper.

3.41 ***Recommendation 13:***

> **that sections 270(2), 329(3) and 329A of the Electoral Act be repealed.**

3.42 Also, in the 1993-6 High Court proceedings Mr Langer argued that a proper construction of section 240 would allow optional preferential voting, as the section does not use the words "consecutive numbers, without the repetition of any number". Although the High Court, the Victorian Supreme Court and the Federal Court have not agreed with this view, the alleged ambiguity should be removed by adding in the extra phrasing.[89]

3.43 ***Recommendation 14:***

> **that section 240 of the Electoral Act, which provides for full preferential voting at House of Representatives elections, be amended to include the words "consecutive numbers, without the repetition of any number".**

3.44 The likely effect of the repeal of section 270(2) on informal voting levels was discussed during the inquiry. The AEC noted the position taken by Professor Colin Hughes in 1990:

> Either optional preferential voting will have to be introduced, which is unlikely because of the uncertainty of its effect on party fortunes, or the saving clause

88 Submissions pS704
89 Submissions pS707 (AEC)

> ought to be deleted, which on the evidence of 1984 and 1987 would add only a couple of thousand more to the informal vote total.[90]

3.45 According to the AEC,

> while a number of voters may now be casting deliberate optional preferential votes...the removal of the provision [might] then result in an immediate upsurge in the informal voting rate at the next federal election, as these "Langer" voters continue with a now ineffective voting strategy. However, over time, and with further public education, the informal voting rate could be expected to stabilise at a lower level...
>
> On the other hand, it might be postulated that "Langer" voters who deliberately cast optional preferential votes are well informed enough not to continue with a voting strategy that is no longer effective. If this were the case, then the potential for increasing the informal voting rate and disenfranchising informal voters by the repeal of section 270(2) might be regarded as relatively low for this category of voters.[91]

3.46 ***Recommendation 15:***

> **that if Recommendation 13 is accepted, at future Federal elections the AEC monitor how many informal votes would have been accepted as formal had section 270(2) of the Electoral Act remained in force.**

3.47 The AEC suggested that perhaps the advocacy of informal voting should still be explicitly proscribed. However provided that it is carefully phrased, and does not mislead voters as to the correct means of casting a formal vote (which would still be an offence under section 329(2) of the Electoral Act; Chapter Seven refers) such advocacy should not be an offence. Presumably the advocacy of informal voting will cease to be an issue if the government agrees to the abolition of compulsory voting.

Alternative Voting Systems for the House of Representatives

3.48 In addition to optional preferential voting, the inquiry received submissions in support of more far-reaching alternatives to the single-member preferential voting system used for the House of Representatives.[92]

3.49 The Committee acknowledges the detail contained in those submissions. However, there is no evidence to suggest that any of proposed systems would prove superior to stable majority government in the House of Representatives, coupled with a Senate elected on a proportional basis and with each State having equal representation. In particular, there is no justification - especially when the operation of the Commonwealth Parliament is compared with its counterparts overseas - for introducing into the House of Representatives the instability and legislative delays engendered by proportional representation.

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90 Submissions pS705 (AEC). See also submissions pS99 (C.Hughes)

91 Submissions pS706

92 Submissions pS41 (S.Gilchrist), pS53 (J.Bombardieri), pS76 (P.Neuss), ppS287-311 (P.Crayson), pS358 (Grey Power SA), ppS412-4, pS416 (Women Into Politics), ppS1878-80, ppS1919-28, ppS1934-7 (Proportional Representation Society of Australia), ppS2124-31 (Electoral Reform Society of SA), ppS2134-5 & pS2140 (E.Patridge); transcript ppEM223-6 & pEM230 (Women Into Politics)

Preferential Voting for the Senate

Optional Preferential Voting

3.50 Several submission writers called for optional preferential voting to be allowed when marking preferences "below the line" on the Senate ballot paper.[93] Some people further argued for the abolition of group ticket ("above the line") voting, on the basis that this option is somehow undemocratic when compared with - or because of the relative difficulty of - filling in preferences below the line.[94]

3.51 In the first instance, the Committee would prefer to see enacted those recommendations in Chapter Six designed to lower the number of candidatures which attract only marginal public support. Voting "below the line" would thereby become a less intimidating process.

3.52 The Committee does not recommend that optional preferential voting be introduced for Senate elections.

Multiple Group Voting Tickets

3.53 Parties or groups nominating for Senate elections are allowed to register two or three voting tickets, provided that each ticket starts with the group's own candidates, numbered in the same order on each occasion, and with all the remaining squares filled in with consecutive numbers. Multiple tickets constituted just over half the 117 registered lists at the 1996 election.[95]

3.54 Sections 272(2) and 272(3) of the Electoral Act set out how "above the line" votes are to be treated when a group has registered two or three tickets. As noted by the Proportional Representation Society of Australia,

> In general terms, [the provisions] assert that essentially the same number of voters are deemed to have endorsed each list, with one or two draws by lot determining the treatment of the one or two votes left over in case an equal division is not possible. As a single party box appears above the line, voters' actual wishes remain unknown...[96]

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93 Submissions ppS05-6 (N.Forbes), ppS09-12 (F.Ashdown), pS39 (S.Gilchrist), ppS64-6 (R.Cooper), pS75 (P.Neuss), ppS271-2 (I.Farrow), pS296 (P.Crayson), pS313-5 (D.Blair), ppS665-6 (J.Rydon), pS1876, ppS1880-93, pS1898 (Proportional Representation Society of Australia) & pS2124 (Electoral Reform Society of SA)

94 Submissions ppS415-6 (Women Into Politics), ppS665-6 (J.Rydon) & pS2125 (Electoral Reform Society of SA). See also submissions ppS1909-10 (Proportional Representation Society of Australia)

95 Submissions ppS1894-8 (Proportional Representation Society of Australia)

96 Submissions pS1895

3.55 The Proportional Representation Society submitted that this method could be found to be invalid, in that it might not conform with section 7 of the Constitution which provides that the Senators for each State shall be "directly chosen" by the people of that State. The Democratic Labor Party (DLP) made a similar submission through the office of Senator Julian McGauran.[97]

3.56 Sections 272(4) and 272(5) of the Act provide that if "effect cannot be given...for any reason" to the earlier provisions, the voter is taken to have marked as far as the numbering in each of the registered tickets in question remains identical, with no further preferences deemed to have been marked. According to the Proportional Representation Society,

> only constitutional reasons could stand in the way of an equalised treatment of multiple tickets being effected. Once accurate records have been established in accordance with normal practice, there will be neither a physical impediment to carrying out such a division, nor one involving calculations...might a fresh and untainted election then be judged preferable to some fall-back fiction [for] those who have marked such a party box..?[98]

3.57 The Society suggested that short of banning group voting tickets, the solution might be to ban multiple tickets or to provide a box "above the line" for each of a group's tickets. The Committee has taken insufficient evidence to make such a decision, but considers this matter to be worthy of consideration by the government.

3.58 ***Recommendation 16:***

> **that before the next election, the government seek advice on the constitutional validity of sections 272(2) and 272(3) of the Electoral Act, which allow a Senate group to lodge multiple voting tickets.**

Display of Senate Tickets at Polling Places

3.59 The display at polling places of Senate group voting tickets was criticised by the Proportional Representation Society and a Mr AJ Betts[99], who informed the inquiry that

> On Saturday 2nd March I attended my local Polling Place to cast my vote for the Federal Election. I looked about the Hall to find the list of Group preference allocation. If I were to vote "above the line" I wanted to know where the preferences were to be allocated. Unable to find the lists I asked the supervising staff attending where they were. Initially the staff did not understand my request, or even what the lists were, & I had to further explain what I required.
>
> Eventually the lists were found & placed on the Hall Stage for my perusal. I then inquired as to the system of preference allocation where more than one ticket was displayed. Again the staff were unable to assist me...
>
> After the election I inquired at the Electoral Commission if it was possible to see these lists prior to the poll. They informed me that the Preference allocations

97 Submissions ppS1505-18 (Senator J.McGauran), ppS1876-7, pS1880, ppS1894-8 & pS1932 (Proportional Representation Society of Australia). See also submissions ppS44-7 (National Party of Australia (WA)) & pS107 (A.Betts)

98 Submissions ppS1895-6

99 Submissions pS107 (AJ Betts) & ppS1899-900 (Proportional Representation Society of Australia)

> lists are available at their offices & that I could attend there to view them. I live near Lismore NSW. I would need to travel to either Tweed Heads or Grafton, both more than four hours driving from my location for a return trip, thus requiring a day off work. I find this unacceptable.[100]

3.60 Section 216 of the Electoral Act requires that Senate group voting tickets be "prominently displayed" on a poster at each polling booth. At present this requirement is not being satisfactorily complied with.

3.61 ***Recommendation 17:***

> **that the AEC revise its procedures to ensure compliance with section 216 of the Electoral Act, which requires that Senate group voting tickets be "prominently displayed" on posters at polling booths. Such information should be made available to electors who request it before polling day.**

Influence of Minor Parties

3.62 To be elected to the Senate, a candidate needs to gain a certain quota of the formal vote for the relevant State or Territory. The quota is calculated by dividing the total number of formal ballot papers by one more than the number of Senators to be elected, and adding one to the result (ignoring any remainder). Where six Senators are elected for a State at a half-Senate election, the quota will be approximately one-seventh of the formal votes cast. Any votes that elected candidates receive in excess of the quota are transferred at a reduced value to the candidates who receive the next available preferences.[101]

3.63 If there are still unfilled positions following the transfer of surplus votes, further counting is undertaken. Starting with the lowest-scoring candidate, unelected candidates are excluded from the count and their votes passed on (at the value at which the votes were received) to the remaining candidates until all positions are filled.

3.64 The inquiry received submissions suggesting that this formula could be amended, to reduce the chances of candidates being elected with little public support.[102] In particular, Mr Wilson Tuckey MP advised that:

> results of the Senate elections for 1990, 1993 and 1996...show that candidates of minor parties or groupings were successful on most occasions with a primary vote of less than 10 percent...
>
> I consider that in the light of the pivotal role now played by minor parties in the governing of Australia, that such influence should not accrue to a Group or Party that earns a low percentage of the Primary vote and/or Senate quota.[103]

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100 Submissions pS107

101 See AEC, *Behind the Scenes* p25 for a brief summary of the Senate voting system.

102 Submissions ppS269-70 (I.Farrow), ppS318-9, ppS334-41 (W.Tuckey MP), pS1877, pS1880 & ppS1900-12 (Proportional Representation Society of Australia); transcript ppEM195-6 (D.Freeman) & ppEM352-8 (W.Tuckey MP)

103 Submissions ppS318-9

3.65 Mr Tuckey submitted that groups which fail to achieve 10 percent of Senate first preferences (roughly two-thirds of a quota at a half-Senate election) should be declared defeated, and their preferences distributed to those parties remaining in the count.

3.66 Public discussion of a Senate first preference quota elicited strong opposition, expressed in the following terms by the Proportional Representation Society:

> Thresholds are common in European non-preferential list systems [however the] single transferable vote that we use in Australia does not fall into this class of systems...
>
> Thresholds spawn two potential types of unfairness...First, they can open up the possibility of converting overall minorities of votes into majority representation.
>
> Being arbitrary by nature, more often they may result in a relative handful of votes making the difference between two quite different outcomes, sometimes involving more than one seat. Such structural instability must inevitably bring the system into disrepute. The thought that just lowering or raising a threshold slightly can profoundly change a result will invite attempts at grubby manipulation, thereby attracting public cynicism.[104]

3.67 For that vast majority of votes recorded "above the line", the major parties always have the option of allocating their preferences to each other before the minor parties. More pragmatically, in addition to a minimum threshold other suggestions to the inquiry included:

(a) reducing the size of the Senate, thereby producing a higher quota for election (perhaps after a referendum on breaking the "nexus", which is the constitutional requirement that the number of Members of the House of Representatives be "as nearly as practicable, twice the number of the senators"); or

(b) having a State's Senators elected in alternating lots of seven and five (rather than six each half-Senate election) in an attempt to produce majority outcomes.

3.68 These and other proposals might be examined further in any future discussions on constitutional reform.

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104 Submissions pS1902

CHAPTER FOUR

ENROLMENT AND VOTING BY CERTAIN GROUPS

Voters in the Territories

The Snowdon Petition to the Court of Disputed Returns

4.1 The 1996 election result for the division of the Northern Territory was challenged in a petition to the Court of Disputed Returns (*Snowdon v Dondas & Anor* (1996)) filed by the ALP candidate Mr Warren Snowdon.[105] Mr Snowdon argued that the AEC had wrongly rejected some 2200 "provisional" votes, which are votes cast by persons whose names or addresses cannot be found on the certified lists of voters used on polling day. A provisional vote for the House of Representatives is admitted to the count if the voter is, in fact, entitled to enrolment for the "subdivision" - to use the terminology in the Electoral Act - for which he or she claims enrolment.

4.2 In the early 1990s subdivisions were formally abolished in all divisions except the Northern Territory and Kalgoorlie in Western Australia. In the Northern Territory there are still 25 subdivisions corresponding with the Territory's Legislative Assembly districts, as well as a further two subdivisions corresponding with Christmas Island and the Cocos (Keeling) Islands. The subdivisions have been retained under the "joint roll" arrangement between the Commonwealth and the Northern Territory, whereby the AEC provides the roll information used for the Territory's elections (similar arrangements are in place with the State governments). Two subdivisions have also been retained for administrative purposes in Kalgoorlie. For all other divisions, section 4(4) of the Electoral Act provides that references in the Act to a "subdivision" are to be read as references to the entire division.

4.3 An elector who fails to notify the AEC of a change of address within a division is at risk of being removed from the roll, on the mistaken assumption that he or she has left the division. Such an elector is able to be reinstated to the roll and to have a provisional vote admitted. This occurs in accordance with Schedule 3 of the Electoral Act, which provides that the elector's removal from the roll was based on a "mistake of fact". However, the continuing existence of subdivisional rolls in the Northern Territory meant that at the 1996 election, 67.13 percent of provisional votes for the division were rejected compared with the national average of 39.63 percent:

> Because of the continuing existence of a large number of federal subdivisions in the Division of the Northern Territory, the DRO for the Northern Territory is unable, under Schedule 3 of the CEA, to reinstate an elector to the Roll, who has moved between subdivisions in the Northern Territory rather than out of the

105 Submissions ppS158-61, pS213 (AEC), pS394 (Senator G.Tambling), ppS655-6 (N.Dondas MP), pS1524 (D.Melham MP), ppS1640-91, ppS1951-2, ppS2062-76 (AEC) & ppS2263-4 (M.Hickey MLA); transcript ppEM35-6, ppEM79-80 (AEC), ppEM133-4 (Liberal Party), ppEM440-55 (D.Melham MP), ppEM460-6 & ppEM474-5 (AEC)

> Northern Territory Division into another Division. This is because the original objection action was proper and not a "mistake of fact".[106]

4.4 The Court of Disputed Returns concluded that the DRO for the Northern Territory was not bound to have been satisfied "that any of the 1594 persons who cast provisional votes was entitled to be enrolled for the Division of the Northern Territory". The Court rejected Mr Snowdon's challenge and ordered him to pay the costs of the two respondents, namely the AEC and the successful candidate the Hon Nick Dondas AM MP.

4.5 The AEC has advised that the Electoral Act could be amended to remove the barrier to reinstatement of provisional votes in the Northern Territory, while still retaining subdivisions corresponding with the Legislative Assembly districts. Mr Daryl Melham MP similarly proposed that the Territory's subdivisions be suspended for Federal elections. Alternatively, the joint roll arrangement with the Northern Territory could be renegotiated to remove subdivisions. The Commonwealth roll would then be reprogrammed to allow enrolment information to be sorted by Territory districts, as is done for the States' electoral purposes.

4.6 Commonwealth electors should be treated in a uniform way throughout Australia. Until such time as the governments of the Commonwealth and the Northern Territory renegotiate the joint roll agreement, the Territory's subdivisions should be effectively suspended for Federal elections. The same arrangement should apply to the division of Kalgoorlie.

4.7 ***Recommendation 18:***

> **that the Electoral Act be amended to allow the reinstatement of provisional votes where an elector has moved between subdivisions in the Northern Territory or Kalgoorlie, but has remained within the relevant division.**

4.8 Obviously this recommendation will need to be reassessed if the government decides to reinstate subdivisions elsewhere, as the Committee has recommended be examined (see page 16). However, Commonwealth electors in the Northern Territory should still not be subject to more onerous requirements than Commonwealth electors elsewhere. It may prove necessary to group the Territory's small subdivisions at Federal elections, so that the subdivisions are effectively of similar size to those in the States and the Australian Capital Territory (ACT).

Adjourned Polling in the Northern Territory

4.9 The presiding officer of a polling place is empowered under sections 241 to 243 of the Electoral Act to adjourn polling from day to day, where polling is interrupted by riot or open violence or by storm, tempest, flood or occurrence of like kind. If for any reason a booth is not opened on polling day, the presiding officer may give public notice of an adjournment of polling for a period not exceeding 21 days.

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106 Submissions pS160 (AEC)

4.10 Due to extreme wet weather conditions which affected flying conditions and the airstrips of East Arnhem, remote mobile polling in some areas of the Northern Territory was adjourned until after polling day for the 1996 election. Mobile polling teams subsequently issued 173 votes at 10 locations.[107]

4.11 While the votes in question could not have altered the results in the Northern Territory, concern was still expressed by Territory parliamentarians Senator the Hon Grant Tambling and the Hon Nick Dondas AM MP. The Committee draws to the AEC's attention Mr Dondas' suggestion that immediately upon the calling of an election during the Territory's wet season, the AEC should conduct polling in those locations in the top end where aircraft access is needed.

Christmas Island and the Cocos (Keeling) Islands

4.12 Senator Tambling submitted that Christmas Island and the Cocos (Keeling) Islands should be allocated to an ACT division instead of the Northern Territory, so as not to complicate negotiations on statehood for the Territory.[108] Areas such as Jervis Bay, Norfolk Island, Christmas Island and the Cocos (Keeling) Islands are allocated to either the Northern Territory or an ACT division, because of doubts over the constitutional validity of including Territories in State divisions.

4.13 An interdepartmental committee has been established to examine statehood for the Northern Territory. The electoral status of the Indian Ocean islanders will be addressed in this forum.

The Australian Capital Territory and Norfolk Island

4.14 In 1991 the House of Representatives Standing Committee on Legal and Constitutional Affairs conducted an inquiry into the legal regimes of Australia's external Territories.[109] The committee recommended that the Electoral Act be amended to give optional enrolment rights to the people of Norfolk Island, with the electorate to which the Islanders would be attached to be determined on the AEC's advice. As already noted, constitutional problems were thought likely if Norfolk Islanders were enrolled for a State division. Canberra, being the only one of the (then) three Territory divisions not already administering an external Territory, was the division selected.

4.15 In response, the Government of Norfolk Island argued that a) the Islanders have no "community of interest" with the division of Canberra and b) a Norfolk Island elector should be permitted to enrol for any division to which he or she can show a past connection. This proposal was subsequently enacted as section 95AA of the Electoral Act.

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107 Submissions pS194 (AEC), pS394 (Senator G.Tambling), pS656 (N.Dondas MP) & pS1498 (AEC); transcript ppEM86-7 (N.Dondas MP)

108 Submissions pS392, pS394 (Senator G.Tambling) & ppS1481-2 (AEC); transcript pEM17 (AEC), ppEM88-9 (N.Dondas MP), pEM364 (B.McMullan MP) & pEM451 (D.Melham MP)

109 *Islands in the Sun* (March 1991)

4.16 The AEC has now renewed its earlier recommendation that those Norfolk Islanders who choose to enrol should be enrolled in Canberra[110]:

> The position of the AEC has been for many years that the community of Norfolk Islanders who choose to enrol for federal elections should enrol in one Division only, in order to maximise their representative power. To put this another way, every other community across Australia has a single Member of the House of Representatives who is responsible for their interests. The electors of the community of Norfolk Islanders should have the same right. By enrolling in many different Divisions, Norfolk Islanders are ensuring that no one voice speaks for their community interests in the Parliament, and as a consequence, they risk weakening their representative power...[111]

4.17 However, the potential for increased representative power seems minimal. Some 92 of the 133 Norfolk Islanders enrolled for the 1996 Federal election are already enrolled for Canberra. Also, when Canberra-only enrolment was first put to Norfolk Islanders some years ago, it attracted a "no" vote of 81 percent at a local referendum.[112] There seems little point in pursuing this matter further.

Redistribution of the ACT

4.18 Section 24 of the Australian Constitution provides, in effect, that a State's share of the Commonwealth population (excluding the Territories) determines how many Members of the House of Representatives are chosen in that State.[113] Section 122 of the Constitution provides that the representation of the Territories is for the Parliament to determine "as it thinks fit". Part III of the Electoral Act contains the relevant provisions. In 1990 the formula for determining the number of Members to be chosen in the Territories was brought into line with the formula applied to the States, following recommendations by the Joint Select Committee on Electoral Reform.[114]

4.19 Section 46 of the Electoral Act provides that during the tenth month after the first meeting of a House of Representatives, the Electoral Commissioner must ascertain the number of the people of the Commonwealth "in accordance with the latest statistics of the Commonwealth". The Commissioner then determines the representation entitlements of the various States and Territories.

4.20 On 28 February 1997, within the tenth month after the 30 April 1996 first meeting of the House of Representatives, the Electoral Commissioner made a determination of representation entitlements. The ACT, its share of the total population having slightly declined, was found to have slipped below the quota to retain a third division it had acquired for the 1996 Federal election. As at April 1997 the redistribution of the divisional boundaries in the ACT was underway.

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110 Submissions pS155, ppS1352-5, ppS1949-51 (AEC), ppS2048-50 (Government of Norfolk Island), ppS2157-8, ppS2169-75, pS2181, ppS2183-6 & ppS2191-3 (AEC); transcript ppEM15-9 (AEC) & ppEM455-7 (D.Melham MP). *The 1993 Federal Election* pp144-5

111 Submissions pS1354 (AEC)

112 Submissions pS2049 (Government of Norfolk Island)

113 For a more detailed examination of the redistribution provisions, see Joint Standing Committee on Electoral Matters, *Electoral Redistributions* (December 1995)

114 *Determining the Entitlement of Federal Territories and New States to Representation in the Commonwealth Parliament* (November 1985)

4.21 The impending loss of the third division was raised in evidence from ACT resident Mr Jim Coates and the Member for Canberra the Hon Bob McMullan MP.[115] Mr Coates and Mr McMullan noted that only those Norfolk Islanders actually enrolled for the ACT are added to the ACT's population when a determination of entitlements is made. Both men argued that as all Norfolk Island electors are eligible to enrol for the ACT, Norfolk Island's entire resident population of approximately 1800 should be included with the ACT's population.

4.22 Alternatively, Mr McMullan argued that the relatively low "quota" (average enrolment) for divisions in Tasmania should apply to the Territories. Tasmania's quota is low because section 24 of the Constitution guarantees each original State at least five Members of the House of Representatives, which is one more than Tasmania would be entitled to based on its current population. The application of the Tasmanian quota would give the ACT and the Northern Territory a stable representation of, respectively, three and two Members.

4.23 However, the Committee cannot support special treatment for the Territories at redistributions. The principle that divisions are allocated to States and Territories according to their relative populations is a sound one, and the States run the same risks in this process as the Territories. Indeed, at the 1996 election one division less was contested in Victoria than at previous elections.

4.24 The argument that Norfolk Island's entire population should be added to that of the ACT for redistribution purposes cannot be sustained. As already noted, enrolment is voluntary for Norfolk Islanders, although voting is compulsory for those enrolled. At the 1996 election just 133 Norfolk Islanders (only 92 of whom were enrolled for the ACT) were enrolled out of a resident population of 1800. This compares with 11.7 million electors nationally out of a total population of approximately 18 million. Also, the Government of Norfolk Island wrote to the inquiry to object to Norfolk Island's population being used in the manner proposed by Mr Coates and Mr McMullan.

4.25 Finally, while losing or gaining divisions has major ramifications for the Territories when compared with the States, which have a larger number of divisions, the Committee would not support adopting the Tasmanian quota for the ACT or the Northern Territory unless the Territories find themselves regularly moving between three and two seats (for the ACT) or two and one (for the Northern Territory). This has yet to occur.

Aboriginal Electors

4.26 Before the election the AEC undertook to improve indigenous access to the electoral process, by recruiting indigenous staff to assist in enrolling Aborigines and Torres Strait Islanders. A national radio campaign was promoted through the "Deadly Sounds" network and enrolment videos and posters were produced to assist the campaign.[116]

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115 Submissions ppS48-9 (J.Coates), ppS372-3 (B.McMullan MP), pS1464, ppS1948-51 (AEC), ppS2048-50 (Government of Norfolk Island) & ppS2153-262 (AEC); transcript ppEM362-8 (B.McMullan MP)

116 Submissions pS144 (AEC)

4.27 While these initiatives are welcome, concerns were expressed at the inquiry about several aspects of Aboriginal participation in the electoral process. Some of these concerns are examined below.

Abolition of the Aboriginal and Torres Strait Islander Electoral Information Service

4.28 The Aboriginal and Torres Strait Islander Electoral Information Service (ATSIEIS) was a national program which aimed to encourage the participation of indigenous people in the electoral process. The service operated through AEC contract staff called Field Officers, and through "Community Electoral Assistants" who were indigenous people trained to act as an electoral resource in their communities and, where appropriate, to assist with the conduct of elections and other AEC activities.

4.29 The ATSIEIS program has ceased following the withdrawal in the 1996 Federal budget of its $2 million funding. The AEC has advised that a "far more limited service to the indigenous community" will be provided by one new position to be created in each AEC State Head Office.[117]

4.30 The Northwest Members of the WA Parliamentary Labor Party protested strongly about the abolition of the ATSIEIS:

> The program has filled a vital [role] in increasing the awareness and involvement of Aboriginal people in the electoral processes of the nation at Federal, State and Local levels...The program ensures that this significantly disadvantaged group of Australians are encouraged to involve themselves in the democratic processes of the country.[118]

4.31 The AEC has stated that within the parameters of its current budget it will do what it can to meet the ongoing needs of Aboriginal and Torres Strait Islander peoples. Following the next Federal election, the effectiveness of the AEC's service delivery to indigenous people should be the subject of a specific review.

4.32 ***Recommendation 19:***

> **that following the next Federal election the AEC conduct a review of its service delivery to Aboriginal and Torres Strait Islander electors, in the context of the abolition of the ATSIEIS, and report back to the Parliament.**

Assisted Voting

4.33 Section 234(1) of the Electoral Act provides that

> If any voter satisfies the presiding officer that his or her sight is so impaired or that the voter is so physically incapacitated or illiterate that he or she is unable to vote without assistance, the presiding officer shall permit a person appointed by the voter to enter an

117 Submissions pS1502; transcript pEM474

118 Submissions ppS687-8; see also transcript ppEM371-4

> unoccupied compartment of the booth with the voter, and mark, fold, and deposit the voter's ballot paper.

4.34 Section 234(2) of the Act provides that

> If any such voter fails to appoint a person in pursuance of subsection (1) the presiding officer, in the presence of such scrutineers as are present, or, if there be no scrutineers present, then in the presence of:
>
> (a) a polling official; or
>
> (b) if the voter so desires, in the presence of a person appointed by such voter, instead of a polling official;
>
> shall mark, fold, and deposit his or her ballot paper.

4.35 While assisting voting is not restricted to Aboriginal electors, the Northern Territory's the Hon Nick Dondas AM MP and Senator the Hon Grant Tambling separately raised concerns peculiar to assisted voting in Aboriginal communities.[119] According to Mr Dondas,

> In a normal situation where people are getting assisted votes, the candidates' scrutineers are called by the presiding officer of the polling booth to say, 'I am assisting somebody to vote', and somebody is called from the parties to observe the technique and the procedure. So everybody knows that it is fair and above board. That is fine. That is how it should be.
>
> But in the Territory, there is the capacity for a 'friend' to keep on wandering people in from the community and help them with a vote. Obviously because they declare their friendship to the presiding officer, or the returning officer, there is no scrutiny by the candidates' representatives in this. So that makes it very, very difficult. If somebody in a small community has a 'friend' and he is wandering 60 or 70 people through the polling booth during that period, it certainly has some impact...
>
> If the presiding officer is going to allow assisted votes, he should be the one who conducts the procedure for an assisted vote for people who are illiterate, incapacitated or whatever the case may be.[120]

4.36 In response to similar concerns about the integrity of assisted voting, the previous committee recommended (in relation to mobile polling) that the Electoral Act be amended to provide that unless medical conditions dictate otherwise, only the elector, an AEC officer and a scrutineer can be present at the filling out of the ballot paper.[121]

4.37 While the then government rejected that recommendation, this Committee believes that the assisted voting provisions are open to abuse. Section 234(1) of the Act should therefore be repealed. Section 234(2) will still permit assistance to be provided by a "presiding officer" at a polling booth; in the absence of subsection (1) this may need to be expanded to allow assistance to be provided by any polling official.

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119 Submissions pS394 (Senator G.Tambling); transcript ppEM89-90 & ppEM92-4 (N.Dondas MP)

120 Transcript pEM89

121 *The 1993 Federal Election* p8

4.38 ***Recommendation 20:***

> **that in relation to assisted voting, section 234(1) of the Electoral Act be repealed, and section 234(2) be amended to allow any polling official (rather than a "presiding officer") to assist a voter.**

Conduct of ATSIC Elections on Polling Day

4.39 Under the *Aboriginal and Torres Strait Islander Commission Act 1989* the AEC is responsible for the conduct of ATSIC's Regional Council elections. Three ATSIC by-elections were conducted in the Northern Territory on 2 March 1996 - which, of course, was also polling day for the Federal election.[122]

4.40 The ALP and Mr Dondas MP expressed concern over potential confusion at either or both elections. In response the AEC argued first, the ATSIC dates had been set before the announcement of the Federal election, and second

> The [Australian Electoral Officer] for the Northern Territory reports that the concurrent conduct of these elections produced no confusion in the communities affected, as the polling places and staff were kept separate. The AEO NT further reports that the concurrent elections in fact had a positive effect on voter turnout for the ATSIC by-elections.[123]

4.41 State elections, however, may not be held on the same day as a Federal election. Increased turnout at ATSIC elections is not a sufficient rationale for those elections to be treated differently.

4.42 ***Recommendation 21:***

> **that the ATSIC Act be amended to provide that ATSIC elections may not be held in the period between the close of nominations and the close of polling for a Federal, State or Territory election.**

4.43 A full round of ATSIC Regional Council elections was held in October 1996. This is discussed further in Chapter Nine (Other Matters).

Multiple Enrolments

4.44 Mr Dondas MP suggested to the inquiry that Aboriginal electors in the Northern Territory can inadvertently be enrolled under more than one name[124]:

> If I register my name on the roll in a community I can have my European name, I can have my skin name and I can have my clan name. Sometimes it is very

122 Submissions pS138 (AEC), pS431 (ALP), pS656 (N.Dondas MP) & pS1489 (AEC); transcript ppEM83-4, pEM95 (N.Dondas MP) & ppEM103-4 (ALP)

123 Submissions pS1489

124 Transcript ppEM91-2 (N.Dondas MP), ppEM121-2 (ALP), pEM294 (C.Hughes) & pEM379 (Northwest Members of the WA Parliamentary Labor Party)

> difficult for returning officers to find that person because they do not remember what name they put in at some particular stage of the game.[125]

4.45 The inquiry did not take evidence to suggest that this is a widespread problem, and certainly there is no suggestion that Aboriginal persons in the Northern Territory are seeking to vote more than once. To the extent that there is a problem, the recommendations in Chapter Two on upgraded witnessing and proof of identity for enrolment will assist.

Overseas Electors

4.46 Under sections 94 and 95 of the Electoral Act, electors who are travelling overseas for a period of three years or less may remain on the roll if they register with their DROs as eligible overseas electors. Registration as an overseas elector must take place within three months preceding departure overseas or within a year after departure. A registration can be extended by application to the relevant DRO.

4.47 A number of Australians resident overseas discovered they were unable to vote at the 1996 election, as they had omitted to contact their DROs to change their enrolment status within the prescribed period. These matters were drawn to the Committee's attention through such a case involving Australia's Ambassador to Belgium, Luxembourg and the European Union, Mr ER Pocock AM, and his wife.[126] The Pococks enrolled for an address in NSW in 1987, departed for France that year and were deleted from the roll in 1991 on the basis of non-residence.

4.48 While the Pococks should have registered as overseas electors before departing for France, their grievance is understandable, as there is now no means of rectifying their original oversight without them returning to reside in Australia for at least one month (thereby again becoming eligible for enrolment, in turn enabling them to register as overseas electors).

4.49 The AEC has suggested legislating to allow government representatives on postings outside Australia to remain enrolled, or to enrol for a subdivision under similar criteria to those provided for itinerant electors. Former Electoral Commissioner Mr Brian Cox OBE MVO submitted that the AEC's proposed amendment should not be confined to public servants, but should apply to any person who travels overseas to reside in another country for the purposes of career or employment.[127]

4.50 ***Recommendation 22:***

> **that the Electoral Act be amended to allow Australians resident overseas for the purposes of career or employment to remain enrolled, or to enrol after departing Australia, for a subdivision under similar criteria to those provided for itinerant electors in section 96(2A) of the Act. The qualifying period of three years or**

125 Transcript pEM91

126 Submissions pS140, ppS156-8 (AEC), pS360, pS365 (Senator M.Baume) & pS2375 (AEC); transcript ppEM19-22 & pEM24 (AEC)

127 Submissions ppS1941-3 (B.Cox)

less under section 94 of the Act should be extended to six years (with the retention of the capacity, under sections 94(8) and 94(9), for electors to apply for further extensions on a year-by-year basis).

4.51 On a minor matter, section 193(2) of the Act lists those persons who can act as authorised witnesses on the postal vote certificate for overseas postal voters. The AEC has asked that outmoded references to the "Queen's Dominions" be deleted from this provision.[128]

4.52 ***Recommendation 23:***

that section 193(2) of the Electoral Act be amended to replace any reference to the "Queen's Dominions" with "Commonwealth".

4.53 Matters relating to overseas postal voting by defence force personnel are examined in Chapter Nine (Other Matters).

Prisoners

4.54 Section 93(8)(b) of 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.

4.55 Following the 1993 election the previous committee recommended that the franchise be extended to all prisoners.[129] This recommendation was made with the intention of encouraging prisoners to observe their civil obligations. The recommendation was agreed to by the government and included in amending legislation, but was quickly withdrawn in the face of community opposition.

4.56 The Queensland Branch of the International Commission of Jurists submitted to this inquiry that the franchise should be extended to all prisoners, for reasons including those put forward by the previous committee.[130] However, this Committee believes that its predecessor's recommendation was entirely inappropriate. While rehabilitation is an important aspect of imprisonment, equally important is the concept of deterrence, seeking by the denial of a range of freedoms to provide a disincentive to crime. Those who disregard Commonwealth or State laws to a degree sufficient to warrant imprisonment should not expect to retain the franchise.

4.57 ***Recommendation 24:***

that section 93(8)(b) of the Electoral Act be amended to provide that a person serving a prison sentence for any offence against the law of the Commonwealth, or of a State or Territory, is not entitled to enrol or vote at Federal elections.

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128 Submissions ppS189-90; transcript pEM68

129 *The 1993 Federal Election* pp142-4

130 Submissions ppS658-63 (Qld Branch of the ICJ), pS1364, pS1382, ppS1498-500 & ppS2384-5 (AEC); transcript ppEM76-7 (AEC), ppEM272-3, ppEM275-7 (Qld Branch of the ICJ) & ppEM497-9 (AEC)

4.58 While it might be argued that a prisoner serving a sentence of just a few days (for a minor offence) should not be disenfranchised, such a sentence is unlikely to coincide with the whole period of a Federal election. Pre-poll and postal voting will therefore remain an option. Further, in committing the minor offence the prisoner has still made his or her own decision to risk the loss of certain privileges.

Silent Electors

4.59 Silent electors do not have their addresses publicly displayed on the electoral rolls, on the basis that this would place the personal safety of the electors or their families at risk. An elector making such a request must give his or her DRO particulars of the relevant risk, and the request must be verified by statutory declaration by the elector or some other person.

4.60 The inquiry received a submission from Mr Kelvin Thomson MP on behalf of a constituent who, while having no reason to fear for her safety, wanted a silent enrolment by virtue of being exposed to "considerable public attention" in her employment.[131] However the electoral roll is intended to be a public document, and enrolment details should be suppressed only when electors have real reason to fear for their, or their families', safety.

4.61 A more serious matter was raised in a confidential submission from a silent elector, who advised

> when I cast my vote in the Federal Election on 2nd March I was asked to place my ballot paper in an envelope which contained my name and address on the outside. I objected to this procedure on the basis that the person opening the envelope to count the vote would have no difficulty in seeing my name on the outside of the envelope and matching it to my ballot paper inside seeing how I voted.

4.62 The AEC responded that voters who identify themselves as silent electors are not asked for their addresses, and the address fields on the front of the declaration envelopes are marked "silent".

4.63 Current procedures appear to be adequate to protect the secrecy of silent enrolment details. However, the review of declaration vote enveloping arising from Recommendation 31 (see page 56) should take account of concerns about the secrecy of declaration voting generally.

Residents of Nursing Homes

4.64 During the 12 days before polling day and on polling day itself, mobile polling teams visit special hospitals, prisons and remote areas. "Special hospitals" consist of nursing homes, hospitals not otherwise appointed as polling places, and other such institutions.

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131 Submissions pS03 (K.Thomson MP) & ppS1459-60 (AEC)

4.65 The Electoral Act refers specifically to "patients" at special hospitals. According to the AEC, this wording excludes many residents of retirement villages[132]:

> Many retirement villages comprise a complex of units including a nursing home, an infirmary, and self-care units. Under the current provisions of the CEA only "patients" in the nursing home and infirmary, that is, only those under medical care, may make use of AEC electoral visitors. However, there are many in the self-care units in such complexes who are not sufficiently mobile to get to a polling place and must arrange postal votes. It is distressing for these elderly and frail self-care residents to be told that they cannot vote at the village while others under medical treatment are able to do so.[133]

4.66 While measures to assist the elderly warrant sympathetic consideration, the changing nature of aged/retirement facilities, whereby large numbers of able-bodied electors may live in an estate which contains relatively few infirm electors, should be thoroughly assessed before the AEC's proposed recommendation is put into place. As it stands the AEC's proposal would not ensure that only those residents genuinely unable to cast ordinary votes used mobile polling facilities.

4.67 Also, the ALP advised that its candidates reported a high level of misunderstanding about the provisions relating to mobile polling in hospitals and nursing homes. The major concerns included doubts about the quality of advice available to patients, the role of hospital and nursing home staff in distributing electoral material, an alleged capacity for undue interference and rights of access by candidates and scrutineers.[134]

4.68 The ALP urged the Committee to reiterate five recommendations on mobile polling made in the previous committee's report on the 1993 election.[135] Those five recommendations were all supported, in whole or in part, in the government's response to the report; however the ALP's concerns suggest a need for one recommendation in particular to be reiterated.

4.69 ***Recommendation 25:***

> **that the AEC improve education for staff in hospitals and nursing homes (and other such institutions likely to be appointed as polling places) to ensure that patients are not deprived of the right to vote, and that the rights of party scrutineers are understood and applied consistently.**

4.70 The DRO for Forde Mr Graham Smith also noted that during mobile polling at special hospitals, voters have to request how-to-vote material before it can be given to them. However, there is no provision for Electoral Visitors (polling officials) to make voters aware in the first instance that the material is available.[136]

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132 Submissions pS195 & ppS2376-7
133 Submissions pS195
134 Submissions pS429. See also submissions pS376 (D.Moloney)
135 *The 1993 Federal Election* pp7-8
136 Submissions pS1432 & pS1448

4.71 ***Recommendation 26:***

> **that section 226(2A) of the Electoral Act be amended so that during the conduct of mobile polling at special hospitals, Electoral Visitors are allowed to advise voters that how-to-vote material is available.**

4.72 Submissions concerning canvassing at special hospitals are further examined in Chapter Seven (Election Campaigning). Lastly, the AEC has requested that a drafting error in the provisions relating to mobile booths at hospitals be corrected.[137]

4.73 ***Recommendation 27:***

> **that a drafting error in section 226(4)(a) of the Electoral Act be corrected, by replacing the reference therein to section 219 of the Act ("participation by candidates in the conduct of an election") with a reference to section 348 ("control of behaviour at polling booths etc.")**

The Disabled

4.74 Disabled access to polling places was mentioned in evidence from various persons and organisations.[138] The Commonwealth Disability Strategy, which commenced in 1994 and has a 10 year time period for full implementation, requires all Commonwealth agencies to develop and implement plans by 1997 to meet the requirements of the Disability Discrimination Act.

4.75 The AEC conceded that it is experiencing particular difficulties in conforming with the Australian Standard AS1428.1 (the Design for Access and Mobility) in relation to wheelchair access at polling booths:

> At the 1996 federal election, the number of polling booths with wheelchair access was just over 50%, an increase of 15% over the 1993 federal election. [However] the AEC faces considerable problems in achieving further substantial improvements, let alone 100% conformity with the Design Standard in all polling booths across Australia.
>
> The AEC normally has about 33 days notice of a federal election, every 2 to 3 years. It is therefore impossible to book suitable premises for polling booths with wheelchair access in advance of the announcement of an election...
>
> Schools are frequently used as polling booths, precisely because they are normally available at short notice, but many of the older schools do not have wheelchair access sufficient to meet the requirements of the Design Standard. In addition, in some locations, such as inner urban areas and older rural areas, there are simply no suitable premises with wheelchair access.[139]

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137 Submissions ppS195-6

138 Submissions pS07 (Murray Shire Council), ppS193-4 (AEC), ppS279-80 (E.McDonald), pS1429, ppS1433-4 (G.Smith), pS1461 & pS1472 (AEC)

139 Submissions ppS193-4

4.76 The AEC has advised that it will continue to try to locate more suitable premises for polling booths, and expects long-term improvements to occur as older buildings are replaced or retro-fitted with wheelchair access. The AEC has also noted that while it may not be the preference of all disabled voters, postal voting does provide a practical alternative.

4.77 The Committee also notes the advice of Mr Graham Smith that

> If an elector attends at a place near a Polling Booth but is unable to physically enter the Polling Booth because of some incapacity - eg. illness, disability or advanced pregnancy - then the Polling staff cannot take a ballot outside of the Booth to permit that elector to vote.[140]

4.78 An "incapacitated vote" provision, similar to that in Queensland's State electoral legislation, should be introduced to allow polling officials to take ballot papers to certain electors immediately outside a polling place.

4.79 ***Recommendation 28:***

> **that the Electoral Act be amended to enable presiding officers to take ballot papers immediately outside a polling place to electors who, because of physical incapacity, cannot enter the polling place. Scrutineers should be given the opportunity to observe this process.**

140 Submissions pS1433; see also submissions ppS2364-8 (AEC)

CHAPTER FIVE

ENROLMENT AND VOTING: OTHER ISSUES

Declaration Voting

5.1 Some 13.8 percent of the total votes cast at the 1996 Federal election were "declaration" votes, rather than ordinary votes. A declaration vote involves the elector filling out his or her details (and making a declaration as to eligibility) on an envelope into which the ballot papers are deposited. The different types of declaration vote are as follows:

- An elector who will not be in his or her home State or Territory on polling day, or who will not be able to attend a polling booth, may cast a **postal vote** before polling day by making a written application to the relevant DRO. If the application is in order the DRO despatches ballot papers and a declaration certificate envelope. Electors registered as General Postal Voters have the ballot papers and envelope despatched to them automatically on the announcement of an election, without having to make a written postal vote application.

- **Pre-poll voting** is available under the same conditions as postal voting but without the need for a postal vote application, if voters are able to attend a pre-poll voting centre such as an AEC divisional office, or an Australian Embassy or High Commission.

- Any voter who on polling day is not 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 may cast a "pre-poll" vote on polling day at a pre-poll voting centre.

- Any elector whose name cannot be found on the certified list of voters, or whose name has already been marked off the roll, is able to cast a **provisional vote** by declaration. Such votes cannot be counted until a careful check of enrolment details and entitlements has been made.

5.2 Of the total votes cast at the election, 3.2 percent were postal votes, 3.9 percent were pre-poll votes, 5.8 percent were absent votes and 0.9 percent were provisional votes.

5.3 Following the close of the polls, the details recorded on a declaration certificate envelope are checked against the electoral roll. This process is known as the "preliminary scrutiny". If the voter details are verified the envelope is opened face down to preserve the secrecy of the ballot, and the ballot papers are removed while still folded and added to the count.[141] The preliminary scrutiny is discussed further at page 64.

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141 Submissions pS182 (AEC)

Pre-poll Ordinary Voting

5.4 Some 235 850 pre-poll votes at the 1996 Federal election were cast by voters in their "home" divisions. The AEC, and AEC staff submitting in a private capacity, argued that this category of pre-poll voter ought to be able to cast ordinary rather than declaration votes.[142]

5.5 As explained by the AEC,

> If...such voters were able to cast an ordinary vote, by being immediately marked off the Certified List of Voters for their home Division, then the time delays, administrative load, and costs involved in the issuing, sorting and collating, and in the required preliminary scrutiny, of such declaration votes, could be considerably reduced.[143]

5.6 The Committee accepts that pre-poll ordinary voting would be a more efficient process for both the AEC and the voter. However, as a matter of principle an ordinary vote should only be available a) when voting in one's home division and b) on polling day.

5.7 While the AEC has questioned the previous committee's conclusion that pre-poll ordinary voting "would encourage and endorse the trend towards an ever-increasing proportion of the vote being cast before polling day"[144], this Committee believes its predecessor's conclusion was valid.

5.8 ***Recommendation 29:***

> **that the AEC, in its pre-election advertising, emphasise that pre-poll and postal voting is only available to those electors who will be unable to cast an ordinary vote on polling day.**

Use of Postal Vote Application Forms by Political Parties

5.9 The major political parties produce copies of the AEC's official postal vote application form, and send the copied forms with political material to electors. The AEC expressed concern to the previous committee[145] about first, the potential for the AEC to be seen as aligned with a political party, and second, a supposed potential for electors to be disenfranchised by delays in the return of completed forms to the AEC.

5.10 While the committee did not adopt the AEC's preferred solution - namely, a complete ban on the reproduction and distribution of postal vote application forms by political parties - it did recommend a ban on the forms "being incorporated with material issued by any body other than the AEC", and on a return address other than an AEC office being nominated.[146] However the government deferred consideration of the recommendations and legislative amendment did not proceed.

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142 Submissions pS183 (AEC), pS1431 & ppS1441-4 (G.Smith); transcript ppEM57-62 (AEC), pEM181, pEM191 (A.Viney), pEM206 (D.Freeman), ppEM253-4 (R.Patching) & ppEM256-7 (G.Smith)

143 Submissions pS183

144 *The 1993 Federal Election* p90

145 Ibid pp91-2

146 Ibid p92

5.11 The AEC resubmitted to this inquiry the previous committee's two recommendations, as did the ALP (on the proviso that the AEC distributes more original forms to candidates).[147] However the Liberal Party stated

> the Electoral Act should acknowledge the legitimate role of political parties in facilitating postal voting by providing electors with application for postal vote forms...The Party recommends the role of political parties in distributing postal vote application forms be formally recognised, and that possible limitations, like copyright, on the reproduction of the forms be removed.[148]

5.12 The reference to copyright is presumably in response to legal action initiated by the AEC in the lead-up to the 1996 Federal election. The AEC had sought an injunction to prevent the Victorian Branch of the Liberal Party from infringing copyright by printing, publishing and distributing a version of the official postal vote application form. The Liberal Party then cross-filed to prevent the Commonwealth asserting its copyright. The Federal Court decided that the Commonwealth had copyright in the forms but could not, because of the peculiar circumstances of the case, enforce that copyright.

5.13 Parties should be able to provide postal vote application forms with political material. However, the application form should not be incorporated into another document with political literature, but should be a stand-alone replica of the official form. This matter should be clarified in the Electoral Act, notwithstanding the protection provided by copyright legislation.

5.14 ***Recommendation 30:***

> **that the Electoral Act and the Referendum Act be amended to make clear that a postal vote application form sent to an elector must be the official AEC form or an exact replica, and must not be incorporated into another document with material issued by a body other than the AEC.**

5.15 Where electors have chosen to make use of a political party's services, obviously the party has every incentive to promptly return the completed application forms to the AEC. There is no need to stipulate that the nominated return address must be that of an AEC office.

Splitting of Postal Vote Envelopes

5.16 Before the 1993 election the AEC developed a postal vote envelope with a "privacy flap". The privacy flap covers the declaration certificate printed on the envelope and, in the absence of legislation to permit double enveloping, was considered the best solution to concerns about the privacy of voter details and the secrecy of the postal ballot.

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147 Submissions ppS183-5 (AEC), pS412 (R.Alcock), pS432 (ALP), pS1363 & pS1379 (AEC); transcript ppEM62-7 (AEC), ppEM109-10 (ALP) & ppEM399-402 (AEC)

148 Submissions ppS623-4. See also transcript ppEM125-6 & ppEM128-30 (Liberal Party)

5.17 The AEC advised the inquiry that

> this design solution has not been entirely successful. Some postal vote declaration envelopes are occasionally returned from the voter with the ballot papers inserted between the privacy flap and the envelope itself, thus invalidating the vote. In addition, at the 1996 election, Australia Post reported instances where postal vote declaration envelopes had split while being processed through Australia Post mail sorting machines. The privacy flap may have been in some measure responsible for this.[149]

5.18 The AEC's solution to the "splitting" problem was to have all stocks of postal vote envelopes reinforced with tape along the perforation line connecting the privacy flap with the envelope.[150] Australia Post also revised its handling procedures.

5.19 Mr Bob Patching, the DRO for Rankin, submitted in a private capacity that the number of envelopes affected was greater than advised by the AEC (a view disputed by the AEC). On the AEC's solution of refastening the envelopes with sticky tape, Mr Patching stated that

> I believe this instruction made a serious situation more serious. I have been an employee with the AEC for nearly eighteen years and a Divisional Returning Officer for nearly 13 of those years and I believe that returned PVCs mended with clear sticky tape present a legal dilemma for returning officers. The questions that would go through my mind are three fold;
>
> (1) were these PVCs mended before despatch from my office? or
>
> (2) were these PVCs mended by the elector? or
>
> (3) were these PVCs tampered with and mended during transit back to my office?
>
> If I were a returning officer for a very close seat in the House of Representatives I would be faced with a decision as to whether I counted these votes or whether I set them aside as I could not verify [their] authenticity to a standard that would allow me to include them in the count with a clear conscience.[151]

5.20 The postal vote envelope should be redesigned as a matter of urgency. However, the Electoral Act currently requires that the voter's declaration be written on the outside of the envelope containing the ballot papers. This limits the AEC's options in developing more secure and reliable methods of transmitting postal votes, such as double enveloping.

5.21 ***Recommendation 31:***

> **that the postal voting provisions of the Electoral Act and the Referendum Act be amended to enable double enveloping, by deleting the requirement for the declaration certificate and the**

149 Submissions pS188

150 Submissions ppS187-8 (AEC), ppS432-3 (ALP), pS1337 (A.McGrath), ppS1408-10, pS1413, ppS1416-21 (R.Patching) & ppS1847-52 (AEC); transcript pEM110-1 (ALP), ppEM241-2 (R.Patching) & ppEM389-91 (AEC)

151 Submissions pS1409

return address of the Divisional Returning Officer to be printed on the envelope into which the postal ballot papers are placed.

Postal Voters in Remote Areas

5.22 In its report on the 1993 election, the previous committee noted that many voters in remote areas were being disenfranchised by mail turn-around times. Persons living more than 20 kilometres from a polling place could register as General Postal Voters, and thereby automatically receive postal vote application forms when an election was called. However they then had to return the completed application, have ballot papers mailed to them and post those back to the AEC.

5.23 In many remote areas of Australia the turn-around time for mail can be a week or more. The process described could therefore take up to a month - too long, in many cases, for electors in remote areas to have their votes counted.[152]

5.24 The Electoral Act has now been amended to allow ballot papers to be sent to General Postal Voters without the need for an application.[153] In evidence to the inquiry, Senator for the Northern Territory the Hon Grant Tambling stated that

> it was pleasing to note the increased participation and ease of convenience to the registered general postal voters (remote electors on pastoral properties). So many of these voters were previously disenfranchised and the changes enabled their active participation in the 1996 federal election.[154]

The Return of Postal Votes

5.25 The Electoral Act allows a period of 13 days after the close of polling for the late receipt of postal votes. Bathurst City Council submitted that the close of postal votes should occur at the close of ordinary polling, to eliminate "significant delays" in the declaration of polls. Mr Bruce Martin submitted that the close of postal votes should occur at 5pm on the next business day after polling day, but with a freecall facility for ordering a postal vote.[155]

5.26 However, the current provisions assist in maintaining the franchise for electors in remote areas and overseas in particular. As the Act already allows a DRO to declare a poll where a candidate has a clear majority and the addition of late postal votes will not affect the result, the Committee does not recommend any change to the time allowed for the receipt of postal votes.

5.27 Also, the Electoral Act requires that a DRO examine the postmark on a postal vote envelope to determine whether the vote was cast before polling day. The AEC has advised that postmarking is no longer a sufficiently reliable indicator of when a postal vote was actually recorded[156]:

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152 *The 1993 Federal Election* pp94-6
153 Submissions pS140 (AEC)
154 Submissions pS393. See also transcript ppEM85-7 (N.Dondas MP)
155 Submissions pS23 (Bathurst City Council), pS1462 (AEC) & pS1867 (B.Martin)
156 Submissions ppS185-7 (AEC), ppS432-3 (ALP) & pS2376 (AEC); transcript ppEM67-8 (AEC) & ppEM111-2 (ALP)

> In preparation for the 1996 federal election, the AEC negotiated with Australia Post for the postmarking of the AEC's mail [however] eligible electors continue to be disenfranchised through no fault of their own. For example, in the Division of Chifley...the percentage of postal votes not postmarked for the 1996 federal election was 59% and a further 20% had an illegible postmark.[157]

5.28 The postmarking requirement should be repealed. The date of the witness's signature should be used to determine if a postal vote was cast before the close of polling.

5.29 ***Recommendation 32:***

> **that paragraph 7 of Schedule 3 of the Electoral Act and paragraph 7 of Schedule 4 of the Referendum Act concerning the postmarking of postal vote envelopes be repealed, 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. 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.**

Availability of the Marked Roll

5.30 The ALP submitted that candidates should be provided with an electronic copy of the marked roll of electors who lodged a postal vote. Currently the marked roll is provided for physical observation 40 days after the election.[158]

5.31 ***Recommendation 33:***

> **that the Electoral Act be amended to permit candidates to receive, on request, an electronic copy of the marked roll of those electors who lodged postal votes at the relevant election.**

Electoral Integrity - Postal Voting

5.32 Some of the submissions on electoral integrity issues proposed changes to postal voting. The security of postal voting is likely to be further examined in the Committee's inquiry into industrial elections (Chapter Nine refers); the lessons learned may well prove relevant to parliamentary elections. The Committee will consider this matter further following the industrial elections inquiry.

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157 Submissions pS186

158 Submissions pS443 (ALP) & pS1492 (AEC)

Ballot Papers - Layout and Method of Marking

Computerised Voting

5.33 The inquiry received several submissions calling for mechanised voting, for reasons including elector convenience, speed of results and security of the ballot.[159] While the AEC advised that "the possibility of mechanised voting at federal elections has been of periodic interest since the beginning of federation", it remains unconvinced that computerised voting is a feasible proposition:

> With current levels of technology and a full preferential voting system in Australia, computerised voting is less practical than 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.
>
> Computerised voting would require computing facilities in every polling booth. The cost, not to mention logistical difficulty, of installing computing facilities in all polling booths across the nation for a single day, would be prohibitive. A rough estimate of the cost of using personal computers for such a system is $112 million (32 000 PCs at 8000 polling places). And with continuous and rapid advances in technology, the investment in PCs may be wasted as they quickly became obsolete.
>
> Another obstacle to computerised voting is the reliability of the actual computer. Experience in the USA has uncovered examples of computer software used for election purposes containing errors sufficient to bring the legitimacy [of] some election results into question...
>
> Perhaps the most serious obstacle to computerised voting is the matter of security...If the software were to be kept secret, as in the USA, it is extremely unlikely subtle vote rigging would ever be detected. Making software publicly available, to ensure integrity and accountability, carries with it its own drawbacks.
>
> The opportunity to corrupt software would also arise with national networking...the only reliable accounting method would be to check the election result against machine-readable cards or ballot papers and manually count them back. To go to such lengths to ensure integrity and accountability would defeat the purpose of computerised voting.[160]

5.34 At least with technology in its current state, the Committee does not support proposals for computerised voting - particularly as the result of a House of Representatives election is generally known within a couple of hours of the close of polls. A computerised voting system would be expensive and less secure than existing methods, and there is no evidence to

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159 Submissions ppS57-8 (M.Spill), pS375 (L.Johnston), ppS414-6 (Women Into Politics), pS618 (D.Freeman), pS635 (R.Johnston MP), pS636 (E.Cameron MP), ppS1331-6 (M.Rea), ppS1364-8, pS1465, ppS1483-7 (AEC) & pS1865 (B.Martin); transcript pEM80 (AEC), ppEM205-6 (D.Freeman), ppEM232-4 (Women Into Politics) & ppEM422-4 (AEC)

160 Submissions ppS1366-7

suggest that voters would find a computer screen more user-friendly than a conventional ballot paper.

Method of Marking the Ballot Paper

5.35 A Senate or House of Representatives ballot paper is informal if:

- it is unmarked;
- it has not received the official mark of the presiding officer and is not considered authentic;
- it has writing on it which identifies the voter; or
- the voter's intention is not clear.

5.36 A House of Representatives ballot paper is also invalid if ticks or crosses have been used or only one number is shown. A Senate group ticket ("above the line") vote is informal if it has no, or more than one, first preference mark. A Senate vote "below the line" is informal if:

- it has no first preference mark;
- a tick or a cross has been used as a first preference mark;
- there is more than one first preference mark;
- less than 90 percent of the boxes have been numbered;
- there are more than three acceptable errors;
- there are 10 or more candidates and less than 90 percent of the boxes have been numbered, or there are more than three numbering errors; or
- there are less than 10 candidates and more than one box has been left blank, or there are more than two numbering errors.[161]

5.37 As noted at page 2, the 1996 election was the first for many years where informal voting increased for both Houses of Parliament. Several suggestions were made to the inquiry as to just what marks on a ballot paper should be accepted as expressing a clear preference, such as various combinations of letters, numbers, ticks and crosses, how a "blank" square should be defined, etcetera.[162]

5.38 Other than certain provisions brought to attention by Mr Albert Langer (see pages 27 to 33), the existing formality requirements are appropriate and should not be altered.

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161 AEC, *Behind the Scenes* p26

162 Submissions pS16, pS21 (M.Doyle), ppS38-40 (S.Gilchrist), pS75 (P.Neuss), ppS618-9 (D.Freeman), pS1430, ppS1437-8 (G.Smith), pS1876 & ppS1881-4 (Proportional Representation Society of Australia); transcript ppEM204-5 (D.Freeman), ppEM311-20 (D.Randall MP) & pEM413 (AEC)

Ballot Paper Layout

The House of Representatives Ballot Paper

5.39 At the 1996 election computer-generated House of Representatives ballot papers were used for the first time, replacing the type-set ballot papers used at previous elections. The 1996 election was also the first where House of Representatives ballot papers were issued to polling places in numbered chequebook-style pads. This approach was introduced to enable polling officials to more easily reconcile the number of ballot papers issued, and to improve accountability in ballot paper handling at all stages.[163]

The Senate Ballot Paper

5.40 The Electoral Act makes it clear that the Senate ballot paper must be printed horizontally rather than vertically, with no layering of groups down the ballot paper. In addition, commercially available printing technologies restrict the AEC to using paper one metre in width. According to the AEC,

> At the 1993 federal election these limitations became critical in New South Wales when some 21 groups of candidates nominated, plus 8 ungrouped candidates. This meant that the print size had to be reduced to fit onto the metre wide paper, to a point where legibility was almost a problem.[164]

5.41 ***Recommendation 34:***

> **that the Electoral Commissioner be provided with a discretion in the Electoral Act with regard to the layout and formatting of the Senate ballot paper, to enable cost-effective use of standard paper stocks and printing technologies. Any new format should not compromise the legibility of the ballot paper.**

5.42 Mr Graham Smith, the DRO for Forde, proposed that Senate voters be given the choice of using either the existing ballot paper or, if intending to vote "above the line", a Group Voting Ticket (GVT) ballot paper similar in format to the House of Representatives ballot paper.[165]

5.43 According to Mr Smith,

> The "existing" Senate Ballot Paper is large and can easily cause confusion to voters because of its size and the alternative voting systems on the same ballot paper...The new "GVT Only" Senate ballot paper which I am proposing would be white in colour, significantly smaller in size than the current one, similar to a House of Representatives Ballot Paper in format and only show the Group (Party) Names on it running down the ballot paper vertically.[166]

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163 Submissions pS192 (AEC)
164 Submissions pS192
165 Submissions pS1429 & ppS1434-7; transcript pEM256 & ppEM259-60
166 Submissions pS1435

5.44 Although Mr Smith cited benefits to the AEC in the handling, sorting and counting of his proposed ballot paper, the Committee does not support his proposal. Alternative Senate ballot papers could create confusion, and would raise concerns amongst voters as to the privacy of their intended method of voting.

The Scrutiny of Votes

5.45 The counting of votes is known as the "scrutiny". Candidates are not allowed to be present at the scrutiny, however scrutineers appointed by the candidates closely observe all counting of votes throughout the election process.

5.46 The scrutiny is conducted as follows[167]:

- at the close of polls, polling officials empty the ballot boxes;
- the ballot papers are unfolded and sorted into first preference votes for each candidate;
- informal ballot papers are set aside;
- the House of Representatives votes are counted first;
- first preference votes are counted for each candidate and put into separate piles;
- the informal ballot papers are counted;
- the first preference results are tabulated and phoned through to the DRO, along with the number of informals;
- the DRO enters the results for each polling place into the AEC's computerised Election Night System (TENIS);
- the results are transmitted to the National Tally Room in Canberra where they are placed on the National Tally Board and are available to the media;
- following the House of Representatives count, polling officials conduct a provisional distribution of preferences known as the "two candidate preferred" or TCP count;
- the TCP results are phoned to the DRO, entered into TENIS and transmitted to the Tally Room; and
- the Senate first preference votes are counted and phoned to the DRO to relay to the Tally Room.

167 AEC, *Behind the Scenes* pp29-30

5.47 As soon as the scrutiny of ordinary votes is finished, polling officials place the ballot papers and declaration vote envelopes into sealed parcels and deliver them to the DRO. Declaration votes are scrutinised at the divisional office after election night.

Computerisation of the Senate Scrutiny

5.48 The *Electoral and Referendum Amendment Bill 1995* was before the Parliament when the 1996 election was announced. If enacted, the Bill would have given effect to several of the previous committee's recommendations, including a proposal for computerisation of the Senate scrutiny.[168]

5.49 Partial computerisation had been introduced for the Senate scrutiny at the 1993 election, with all States using a computerised tally sheet. The amendments recommended by the previous committee would see all "below the line" Senate votes keyed into a computer, which would automatically verify for formality and identify exhausted votes. Once the keying in of ballot papers had been completed, the computer would identify the elected candidates. Candidates' scrutineers would have access to progressive printouts, showing at each stage of the count which candidates are elected, surpluses and transfer values and progressive exclusions.

5.50 In 1995 the AEC demonstrated a computerised system to the previous committee and other stakeholders. The computerised system has been supported by all concerned, and ought to be implemented before the next Federal election.

5.51 ***Recommendation 35:***

> **that section 273 of the Electoral Act be amended so as to permit the Senate scrutiny to be carried out by either the current manual processes or by a computer process based on the same principles as the manual count.**

The Two Candidate Preferred (TCP) Count

5.52 The 1996 Federal election was the second at which the AEC conducted a two candidate preferred count for the House of Representatives. Before an election the AEC identifies the two candidates most likely to win in each division, using relevant objective data including historical results. Preferences are then distributed direct to those two candidates during the scrutiny (in addition to the full distribution of preferences). The objective is to gain an early indication of the outcome of the full distribution of preferences, and to thereby ascertain "on the night" the House of Representatives result. For the 1996 election the TCP count was extended to the declaration vote scrutiny and to the fresh scrutiny conducted in each divisional office immediately after polling day.

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168 *The 1993 Federal Election* pp22-3. Submissions pS135, pS139, pS205, pS1487 (AEC), ppS1912-3 (Proportional Representation Society of Australia) & pS2125 (Electoral Reform Society of SA); transcript ppEM4-5 (AEC) & pEM205 (D.Freeman)

5.53 The AEC recognises that the two candidates selected for the TCP count may not be correct:

> This occurred in 1996 in three Divisions: Calare, Grayndler and Moore...In such circumstances, the TCP results are not released on polling night and it is a simple matter to conduct the TCP, using the correct final two candidates, in the fresh scrutiny.[169]

5.54 The AEC and Mr Graham Smith both submitted that in most divisions the TCP count should be used for the formal declaration of the poll.[170] The declarations would occur much earlier than is possible based on the full distribution of preferences.

5.55 Where no candidate has a majority of the first preferences, if possible the TCP count should be used to formally determine the elected candidate. This would occur when the two candidates with the highest first preference votes cannot be displaced from those positions, regardless of how the preferences of lower-placed candidates are distributed.

5.56 At the 1996 Federal election there were just six divisions - Calare, Wills, Capricornia, Fisher, Curtin and Moore - where the TCP count could not have been used to determine the elected candidate. The AEC has noted that of those divisions, only Calare and Capricornia were considered by commentators to be too close to call on first preferences.

5.57 ***Recommendation 36:***

> **that the Electoral Act be amended so that, where on the basis of first preferences votes the exclusion of all but two candidates for a House of Representatives division is inevitable, the declaration of the poll proceeds based on the result of the two candidate preferred count.**

The Preliminary Scrutiny of Declaration Votes

5.58 As noted at page 53, declaration votes go through a "preliminary scrutiny" before being admitted to the count. The preliminary scrutiny does not involve any examination of the ballot papers, but is an examination of voter details recorded on declaration certificate envelopes. A declaration vote is accepted for further scrutiny if the DRO is satisfied that the voter is enrolled (or entitled to be enrolled) for the division and the declaration certificate is properly signed and witnessed. In the case of postal votes, the DRO must also be satisfied that the voter's signature is genuine and properly witnessed, and that the vote contained in the envelope was recorded before the close of the poll.

5.59 Section 266(1) of the Electoral Act provides that the preliminary scrutiny commences "after the close of the poll for a division". In the interests of speeding up the count and reducing pressure on AEC staff and computer systems, the preliminary scrutiny should begin in the week before polling day.[171] While such an approach would require candidates to

169 Submissions pS203 (AEC)
170 Submissions ppS203-5 (AEC), pS1429 & pS1433 (G.Smith)
171 Submissions ppS201-2 (AEC). *The 1993 Federal Election* pp20-1

consider having scrutineers available before polling day, this would be offset by a shorter and less hectic post-polling day scrutineering period.

5.60 The Committee emphasises again that the "preliminary scrutiny" refers only to the initial checking of electors' details on declaration envelopes; the actual scrutiny of the ballot papers would still commence after the close of the polls.

5.61 ***Recommendation 37:***

> **that section 266 of the Electoral Act concerning the preliminary scrutiny of declaration votes be amended to provide that the preliminary scrutiny may begin on the Monday before polling day.**

Provision of Results to the Media

5.62 The AEC's Election Night Management Systems (ELMS) were used to provide electronic data feeds to all major television networks. Polling data was once again analysed using the "matched polling place" technique to eliminate bias in early swing figures.[172]

5.63 At the 1993 election the provision of results to the media was the subject of some debate between the AEC and the networks, with disagreement over the compatibility of the different organisations' systems and the actual feed of results on the night.[173] This inquiry received no complaints of a similar nature. Indeed, the ABC's election analyst Mr Antony Green copied to the inquiry the following correspondence to the Electoral Commissioner:

> In the past there has been some dispute over the provision of data on election night. The ABC was entirely satisfied with the format and provision of data at this election, and are happy that it meets all our requirements for analysing the results on the night...thank you for all your assistance at this election, and I look forward to similar co-operation in the future.[174]

Live Broadcast of Results to Western Australia

5.64 On election night results from the eastern States were being broadcast before the close of polls in Western Australia, South Australia and the Northern Territory. Some submission writers suggested that the broadcast to Western Australia in particular should be delayed, to avoid voters being influenced by knowledge of the trend of voting elsewhere.[175]

5.65 As the previous committee noted after the 1993 election[176], no evidence has been provided to support this concern and the practicality of imposing a blackout of early results to Western Australia has not been established. This Committee does not propose any form of delay on the broadcasting of election results.

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172 Submissions ppS200-1 (AEC)
173 *The 1993 Federal Election* pp24-6
174 Submissions pS420 (A.Green)
175 Submissions ppS24-8 (R.Parkinson), pS77 (C.Richards), pS640 (E.Cameron MP) & pS1462 (AEC)
176 *The 1993 Federal Election* p28

Queuing at Polling Places

5.66 The committee in the 36th Parliament made recommendations after the 1990 election to avoid a repeat of serious queuing problems.[177] Time checks are now conducted to identify polling places where voters may have queued for longer than the AEC benchmark of 10 minutes. The information obtained from such surveys is used to guide planning for the next election.

5.67 The AEC claims that as a result of the 1990 committee recommendations, "no major queuing problems" were experienced at the last two Federal elections. While polling place procedures were substantially improved for the 1993 election, in evidence to this inquiry the ALP advised of "significant early morning queues" in Brisbane in particular.[178]

5.68 The ALP's observation was confirmed by Mr Graham Smith, the DRO for the division of Forde in Queensland:

> because people were wanting to vote early, we just had to cope with that demand. But, as it turned out later in the day, the queues had dropped significantly. I think it is just the nature of the beast: if everyone decides to vote early, you cannot possibly have any crystal ball to gaze into to see exactly what is going to happen on the day.[179]

5.69 Mr Smith advised that the queues did not last long, and the ALP's complaint was the only one of its type the inquiry received. Also, only four percent of electors surveyed (in a Newspoll study commissioned by the AEC[180]) stated they had to queue. The majority of those electors advised that the queues were "acceptable". Nonetheless, the Committee expects that in the lead-up to the next election the AEC will consider its strategies to minimise early morning queuing.

AEC Public Awareness Campaign

5.70 For the 1996 election the AEC conducted its usual campaign to remind voters of their rights and responsibilities. Four main messages were conveyed in the campaign: the need for eligible persons to ensure they were correctly enrolled before the close of rolls; the availability of postal, pre-poll, mobile and absent voting facilities; the requirements for formal voting; and when and where to vote.[181]

5.71 All national advertising was translated into various languages. Radio advertising appeared on community service stations, including print handicapped and Aboriginal communities as well as ethnic language programs. Expenditure on ethnic media outlets accounted for approximately eight percent of press media costs and 26 percent of radio media costs.

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177 *1990 Federal Election* pp7-29

178 Submissions pS193 (AEC), pS429 (ALP) & ppS1952A-3 (AEC); transcript ppEM100-1 (ALP), pEM130 (Liberal Party), pEM261 (G.Smith) & ppEM398-9 (AEC). *The 1993 Federal Election* pp5-6

179 Transcript pEM261

180 AEC, "Post Election Study" (March 1996). Accepted as exhibit no.2

181 Submissions pS137, ppS143-8, pS1350 & pS1370 (AEC); transcript ppEM5-9 & ppEM412-4 (AEC)

5.72 The Committee welcomes the AEC public awareness campaigns which, to judge from the aforementioned Newspoll research, performed credibly in raising awareness among electors.[182] However, the increases in informal voting levels should obviously serve as a warning against complacency. Future AEC publicity campaigns will also need to focus on upgraded enrolment procedures and other measures recommended in this report, if the government chooses to implement those measures.

The Voting Guide

5.73 The AEC delivered an information leaflet, "Your Guide to the Federal Election", to more than seven million Australian households in the fortnight before polling day. The leaflet contained State-specific information on pre-poll and postal voting, correct methods for completing the two ballot papers, the voting systems for the two Houses of Parliament and the contact number and address for each AEC divisional office.

5.74 During the 1993 election the AEC received complaints about the Voting Guide being delivered to households with party political material enclosed. To prevent a repeat of this, in 1996 the Voting Guide was delivered shrink-wrapped in plastic. Nonetheless

> the AEC is aware of six instances where individual distributors split open the plastic wrapping and inserted a range of other items which they had undertaken to deliver for other clients, some of which was political campaign material. The AEC held discussions with the distribution contractor about the matter and possible measures that could be taken in the future.[183]

5.75 The AEC will monitor this problem in the lead-up to the next election. Obviously the Voting Guide should not be sent out with political literature, and it ought to be a matter of concern to the Parliament if this occurs at a third successive election.

Statutory Newspaper Advertising

5.76 The Electoral Act requires that the receipt of election writs be advertised in not less than two newspapers circulating in the relevant State or Territory. According to the AEC,

> This statutory requirement is an inefficient and outdated means of communicating the necessary message to the public, particularly given that in some States and Territories it may be difficult to find two newspapers that are widely circulated in that State/Territory. The announcement of an election by the Prime Minister generates widespread publicity of the event and of the key dates.[184]

182 Submissions pS144 (AEC)
183 Submissions pS145 (AEC)
184 Submissions pS147

5.77 The relevant provisions of the Electoral Act and the Referendum Act should be amended.

5.78 ***Recommendation 38:***

> **that sections 153(2)(b) and 154(4)(b) of the Electoral Act, and section 14(2) of the Referendum Act, be amended to require the advertising of election and referendum writs in only one newspaper circulating in a State or Territory where there are not two newspapers in wide circulation.**

CHAPTER SIX

NOMINATION OF CANDIDATES AND REGISTRATION OF PARTIES

Section 44 of the Constitution

6.1 Section 163 of the Electoral Act provides that a person who has reached the age of 18 years, is an Australian citizen, and is either "an elector entitled to vote at a House of Representatives election" or qualified to become such an elector, is qualified to be elected to the Commonwealth Parliament. However, section 44 of the Australian Constitution sets out separate disqualifications which prevent a person from being chosen or sitting as a Senator or Member of the House of Representatives.

6.2 At recent elections the requirements of sections 44(i) and 44(iv) in particular have caused considerable difficulty for many candidates.[185] 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.

6.3 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. However subsection (iv)

> does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the Queen's Ministers for a State, or to the receipt of pay, half pay, or a pension, by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military

185 Submissions pS34 (P.Boyle), ppS169-71, ppS212-3 (AEC), ppS427-9, ppS445-67 (ALP), pS629 (Liberal Party), ppS1487-8, ppS1526-639 (AEC), pS1917 (Proportional Representation Society of Australia) & pS2388 (AEC); transcript pEM39 (AEC), ppEM104-5, pEM119 (ALP), ppEM127-8 (Liberal Party) & pEM295 (C.Hughes)

> forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.

6.4 In effect, this last paragraph excludes from the disqualification past or present members of the British armed forces, as well as Australian Defence Force reservists (being members of the military forces of the Commonwealth "whose services are not wholly employed by the Commonwealth").

6.5 A candidate for a Federal election is required to make a declaration on the nomination form that he or she is not disqualified by section 44, the full text of which is printed on the form. In accepting the nomination an AEC returning officer 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.[186]

6.6 The mechanism used to address doubts about a successful candidate's eligibility is a petition to the High Court sitting as the Court of Disputed Returns, as discussed in Chapter Nine. In the 1992 *Sykes v Cleary* and 1996 *Free v Kelly & Anor* cases, the Court held that elected House of Representatives candidates had held offices of profit under the Crown at the time of nominating and therefore were disqualified under section 44(iv).

Sykes v Cleary

6.7 Following the April 1992 by-election for the division of Wills in Victoria, unsuccessful candidate Mr Ian Sykes lodged a petition with the Court of Disputed Returns (*Sykes v Cleary* (1992) 176 CLR 77). Mr Sykes claimed that the elected candidate Mr Phil Cleary had held an office of profit under the Crown. Mr Sykes further claimed that while candidates Mr John Delacretaz and Mr Bill Kardamitsis were naturalised Australian citizens, both were under acknowledgment of allegiance to a foreign power within the meaning of section 44(i).

6.8 On 25 November 1992 the Court decided that Mr Cleary, as a Victorian State school teacher on leave without pay, held an office of profit under the Crown at the time of his nomination and therefore was disqualified under section 44(iv). The Court also decided that candidates of foreign birth, notwithstanding their having taken Australian citizenship and severed domestic and social links with their country of birth, may be disqualified under section 44(i) if they fail to take all reasonable steps to renounce foreign nationality. The Court did not define what those "reasonable steps" are, but found that Mr Delacretaz and Mr Kardamitsis were ineligible because they had not applied to the Swiss and Greek governments respectively to renounce their citizenship of those countries, notwithstanding that each man had become an Australian citizen and, during his naturalisation ceremony, had renounced all allegiance to any sovereign or State of whom or of which he was a subject or citizen.

6.9 The Court declared the election for Wills to be absolutely void. The seat then remained vacant until the March 1993 Federal election, at which Mr Cleary was returned.

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186 Submissions pS1532 (AEC)

Free v Kelly

6.10 At the 1996 Federal election Miss Jackie Kelly won the division of Lindsay in NSW for the Liberal Party. Her nomination was lodged on 2 February 1996, at which time she was an officer in the Royal Australian Air Force (RAAF). She arranged a transfer to the RAAF Reserve on 17 February 1996, bringing her within the exception to section 44(iv) mentioned at pages 69 and 70.

6.11 In response to a petition brought by the ALP candidate Mr Ross Free, Chief Justice Brennan sitting as the Court of Disputed Returns decided that Miss Kelly had held an office of profit under the Crown at the time of her nomination, and therefore was ineligible to be chosen or to sit as a Member of the House of Representatives. A second ground of the petition, that Miss Kelly was a New Zealand citizen at the time of her nomination and therefore was ineligible under section 44(i), was not argued or decided.

6.12 Brennan CJ declared the election for Lindsay to be absolutely void, rather than ordering the special count requested by Mr Free. A fresh election was held on 19 October 1996 and won by Miss Kelly.

Senator Jeannie Ferris

6.13 A question arose after the election as to whether work performed by Ms Jeannie Ferris for a government Senator, following Ms Ferris' own election as a Senator but before the commencement on 1 July 1996 of her term, constituted an office of profit under the Crown.[187] On 29 May 1996 the Senate resolved to refer the question to the Court of Disputed Returns, with the resolution to take effect on 14 July 1996 should Senator-elect Ferris be a member of the Senate at that time.

6.14 Senator Ferris resigned her position on 12 July 1996 and subsequently was appointed by the Parliament of South Australia to fill the casual vacancy thus created. The Opposition in the Senate then raised a question as to whether, if Senator Ferris was not qualified to be elected in the first instance, there in fact was a casual vacancy to be filled or whether the High Court would hold that a recount or another election should be held. To date this matter has not been pursued.

Clarification of Section 44

Provision of Legal Advice by the AEC

6.15 The AEC advised that it

> does not provide legal advice to individuals, candidates, political parties or commercial interest groups for sound legal reasons, not the least of which is the possibility of providing an opinion which might be found wrong in law by a court, after the election is over, resulting in the possible voiding of an election.

187 See discussion of the uncertain position of Senators-elect in K.Cole, *'Office of Profit Under the Crown' and Membership of the Commonwealth Parliament* (Parliamentary Research Service Issues Brief No.5 April 1993) at submissions ppS464-5 (ALP)

> Advisory opinions, which may or may not be provided by other Commonwealth agencies in other less critical circumstances, cannot be provided by the AEC in circumstances that could adversely affect the rights and interests of citizens in electing their Government.[188]

6.16 The AEC takes particular care not to provide possibly misleading advice or opinions on section 44 of the Constitution. The AEC will only direct candidates to relevant case law and recommend, as appropriate, a Parliamentary Research Service paper on section 44(iv). In the Candidate's Handbook the AEC also suggests to Commonwealth and State public servants that they resign before nominating (the position of local government employees was not clarified in *Sykes v Cleary* or *Free v Kelly*).

6.17 The ALP believes that the AEC should play a more active role in advising candidates on their eligibility.[189] While the Committee accepts that telling candidates to seek their own legal advice is the most responsible course for the AEC to take, it could still do more to assist candidates. For example, on section 44(i) the Liberal Party has suggested that

> the AEC should produce and distribute to interested individuals, political parties and others material explaining the dangers that some candidates face. Specifically, the AEC could detail the differences in renunciation procedures for countries from which Australia could expect to have a large number of citizens having acquired dual nationality - New Zealand, the United Kingdom, Italy and Greece are examples.
>
> The AEC and the Attorney-General's department should be required to establish guidelines about issues related to section 44(i) of the Constitution. The details would include:-
>
> . how Australian citizens may have acquired the status of dual citizenship, whether actively or involuntarily; and
>
> . procedures for the renunciation of non-Australian citizenship.[190]

A Referendum Proposal

6.18 On 29 October 1996 the Senate unanimously passed the following motion:

> *That the Senate -*
>
> *(a) notes:*
>
> *(i) the High Court ruling of 11 September 1996 that the 1996 federal election result in the House of Representatives seat of Lindsay was invalid, and*

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188 Submissions pS1473

189 Submissions pS169 (AEC), pS427 (ALP), ppS1487-8, pS1532, pS1544 & pS1616 (AEC); transcript ppEM104-5 (ALP) & ppEM127-8 (Liberal Party)

190 Liberal Party submission dated 18 March 1997 to the House of Representatives Standing Committee on Legal and Constitutional Affairs' Inquiry into Section 44(i) and (iv) of the Australian Constitution (submissions pS135)

(ii) that section 44 of the constitution impedes many Australian citizens from standing for Parliament, including citizens holding dual citizenship, public servants and certain others who may be holding an office of profit under the Crown; and

(b) calls on the Federal Government to respond with a proposal for amendment.

6.19 Other means of minimising the uncertainly caused by section 44 have been examined. For example, the Standing Committee of Attorneys-General (SCAG) has considered uniform legislation to provide reinstatement rights to State public servants who resign to contest an election (Commonwealth public servants already possess this right). The previous committee recommended that the government examine the introduction into the Citizenship Oath of a "simple mechanism for the renunciation of foreign allegiance."[191] However, such tinkering has not proved effective. The time has come for a referendum proposal on section 44 to be put to the people.

6.20 The Committee notes that on 16 December 1996 the Attorney-General, the Hon Daryl Williams AM QC MP, referred the following matter to the House of Representatives Standing Committee on Legal and Constitutional Affairs:

The Committee shall inquire into and report on:

- *the operation of subsections 44(i) and 44(iv) of the Constitution (including the exception to subsection 44(iv) set out in the last paragraph of section 44).*

- *action (including constitutional amendment, legislative or executive action) to address any identified problems relating to the operation of subsections 44(i) and 44(iv).*

6.21 Without wishing to pre-empt the House of Representatives committee, section 44(iv) could be amended to specify that the "office of profit" disqualification applies from the start of an MP's term, rather than from the time of nomination. Section 44(i) could be deleted and the Constitution otherwise amended to make Australian citizenship a necessary qualification for membership of the Parliament, as was proposed in the 1988 *Final Report* of the Constitutional Commission.[192]

6.22 ***Recommendation 39:***

that at an appropriate time, such as in conjunction with the next Federal election, a referendum be held on a) applying the "office of profit" disqualification in section 44(iv) from the start of an MP's term, rather than from the time of nomination, and b) deleting section 44(i) on "foreign allegiance" and otherwise amending

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191 Submissions ppS170-1 (AEC). *The 1993 Federal Election* pp78-9

192 See discussion of reports/recent constitutional convention debates in S.O'Brien, *Dual Citizenship, Foreign Allegiance and s.44(i) of the Australian Constitution* (Parliamentary Research Service Background Paper No.29 December 1992) pp44-9

the Constitution to make Australian citizenship a necessary qualification for membership of the Parliament.

6.23 MPs could hold dual citizenship under the Committee's referendum proposal. While in contemporary Australia this would be reasonable, the nomination form ought to then be amended to oblige candidates to make public any foreign citizenships held.

Deposits and Signatures

6.24 The deposit required of a House of Representatives candidate is $250, refundable if the candidate achieves four percent of the formal first preference vote for the relevant division. The deposit required of a Senate candidate is $500, refundable if the candidate (or the Senate group in which the candidate is included) achieves four percent of the formal first preference vote for the relevant State or Territory. Neither deposit has been increased since 1983.

6.25 The AEC submitted that the deposits are too modest to dissuade candidates who can only acquire a handful of votes.[193] At the 1996 election, 402 of the 908 House of Representatives candidates polled less than the four percent threshold for return of the deposit and payment of election funding (Chapter Eight refers). Of the 85 Senate groups, 57 polled less than four percent. All 29 of the ungrouped Senate candidates received less than four percent of the vote.

6.26 As the nomination fees have not altered since 1983, increases from $250 to $350 for the House of Representatives and $500 to $700 for the Senate - well below the rate of inflation since 1983 - are warranted.

6.27 ***Recommendation 40:***

that section 170(3) of the Electoral Act be amended to increase the deposit for nomination from $250 to $350 for the House of Representatives, and from $500 to $700 for the Senate.

6.28 Also, a candidate not endorsed by a registered political party needs just six signatures from electors enrolled for the relevant election (the relevant House of Representatives division or State/Territory for the Senate) to have a nomination accepted. In contrast, a registered political party nominating a candidate is required to have at least 500 members.

6.29 A candidate who is unable to attract 50 signatures within a division, let alone an entire State or Territory for the Senate, will have no hope of election. Potential candidates should be asked to demonstrate at least that modest level of support when preparing their nominations.[194]

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193 Submissions ppS168-9 (AEC), pS1431 & ppS1446-7 (G.Smith); transcript ppEM42-3 (AEC), ppEM117-9 (ALP), ppEM138-9 (Liberal Party) & pEM342 (P.Filing MP). *The 1993 Federal Election* p82

194 Transcript ppEM42-3 (AEC)

6.30 ***Recommendation 41:***

> **that section 166(1)(b)(i) of the Electoral Act be amended so that the number of signatures required in support of a nomination by a candidate not endorsed by a registered political party is increased from six to 50.**

Nomination of Candidates: Other Issues

Close of Nominations and the Declaration

6.31 Nominations close at 12 noon on a day not less than 11 days, or more than 28 days, after the issue of the writ for an election. Immediately after the close of nominations, the nominations are publicly declared and the random draw for ballot paper positions takes place at AEC offices around the country.

6.32 The AEC submitted to both this inquiry and the 1993 election inquiry that there should be a 24-hour delay between the close of nominations and the declaration, so as to give AEC staff more time to check details on the nomination forms[195]:

> the trend at recent elections has been toward an increasing number of candidates nominating and, additionally, for many candidates to leave their nomination until the final day (and often the final hour). Immense pressure is therefore placed on returning officers to administer the detailed process, check that all is in order with the nomination forms, check the entitlement of nominators and generally satisfy themselves that the provisions of the Electoral Act are being met - all in a short period of time in which the critical decision of whether or not to accept or reject the nomination has to be made. There can be, for example, little possibility of obtaining legal advice on the validity of a last minute nomination.[196]

6.33 The previous committee recommended only a five hour gap, as part of an unsuccessful attempt to reduce the minimum election period from 33 to 28 days. This Committee believes that the AEC's proposal is sensible and should be adopted. A minimum nominations period of 10 days, rather than 11, will still allow candidates ample time to get their forms to the AEC.

6.34 ***Recommendation 42:***

> **that sections 156(1), 176 and 213(1)(a) of the Electoral Act be amended to reduce the nomination period by one day (to not less than 10 days or more than 27 days), with the declaration of nominations to be held 24 hours after the close of nominations. Sections 211 and 211A of the Act (which refer to the "closing" of nominations) should be amended, so that Senate candidates and**

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195 Submissions ppS162-3, ppS1360-1 & ppS1376-8 (AEC); transcript ppEM38-41, ppEM43-5 (AEC), ppEM118-9 (ALP) & pEM139 (Liberal Party). *The 1993 Federal Election* pp87-8

196 Submissions pS162

groups still have 24 hours after the declaration to advise the AEC of their desired preference distributions.

Frivolous or Politically Significant Names

6.35 The AEC's Divisional Returning Officers are empowered under the Electoral Act to alter the enrolled names and addresses of electors. For example, a female elector who marries or divorces may easily change her enrolled surname by submitting a new enrolment form.

6.36 However, the AEC is concerned about an increasing number of electors

> who wish to be called by names that may have a political or electoral significance, or that are unreasonably long and obviously frivolous. For example, an elector recently applied to a DRO to have her name changed on the Roll to "LouisXVIDelorsChauNguGrimmNixonAndersenPerryCoopGrangerMasure". The DRO had the discretion to reject this application for a name change and did so, because the individual concerned had repeatedly changed her name, and was clearly becoming a vexatious client.[197]

6.37 In the week before the election the AEC received an application from a person who wanted his enrolled name changed to "Abolish Child Support and Family Court". Another person wanted his name changed to "Legalise Marijuana". Both individuals stated their intention to stand as candidates with their new names on the ballot paper.[198]

6.38 The AEC submitted that as the practice described could confuse the voting public and confer an unfair electoral advantage, the Electoral Act should be amended to prohibit the enrolment of an elector with a politically or electorally significant name. However the Committee believes that the AEC's concerns are overstated. As noted above, DROs already have the discretion to reject clearly frivolous applications.

Place of Senate Nominations

6.39 The Electoral Act requires that the Senate ballot paper draw and declaration of the result take place "at the original place of nomination", which must be the office of the Australian Electoral Officer (AEO) for the relevant State or Territory. The AEC has asked that this requirement be amended, given the possibility of insufficient space being available at an AEC Head Office.[199]

6.40 ***Recommendation 43:***

that sections 176(1), 213(1)(a) and 283(1) of the Electoral Act be amended to allow the Senate ballot paper draw and the declaration of the Senate result to be carried out at the place of nomination, or at another convenient location as decided by the Australian

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197 Submissions pS154

198 Submissions ppS154-5 & pS167 (AEC); transcript ppEM14-5 & ppEM45-8 (AEC). See also *Tasmanian Electoral Amendment Bill 1996* (accepted as Exhibit no.7) - the Tasmanian State Electoral Office has encountered similar problems in relation to an individual called "Informal".

199 Submissions ppS163-4

Electoral Officer, if insufficient space is available at the AEC Head Office.

Endorsement of Candidates by Political Parties

Disendorsed Candidates

6.41 As required under the Electoral Act, the AEC began printing ballot papers for the 1996 election immediately after the close of nominations on Friday 9 February. Pre-poll and postal voting could thereby commence in the week beginning Monday 12 February. However, on 14 February Ms Pauline Hanson, the Liberal Party candidate for the division of Oxley in Queensland, was disendorsed by the Party.

6.42 The Attorney-General's Department advised the AEC that Ms Hanson's disendorsement had no effect under section 214(1) of the Electoral Act, which provides that where a registered political party has endorsed a candidate the party's name must be printed next to that candidate's name on the ballot paper. Section 366 of the Act prevents the Court of Disputed Returns voiding an election on the basis of an incorrect party affiliation on the ballot paper.

6.43 The AEC informed the inquiry that

> The disendorsement of the Liberal Party candidate for Oxley after the close of nominations is regarded by the AEC as an internal matter for the Liberal Party, and not one on which the AEC should comment further, except to observe that the relevant provisions of the CEA do not need amendment to cover such a rare occurrence that was, in any case, widely canvassed in the media and understood in the community.[200]

6.44 The controversy surrounding Ms Hanson's election does not, in itself, warrant an impractical amendment to provide for party affiliations to be removed from the ballot paper after the close of nominations.[201]

Similar Party Names on the Ballot Paper

6.45 Sections 210(1)(e) and 212(b) of the Electoral Act allow the addition of descriptions to candidates' names on the ballot paper, where similar names are likely to cause confusion (for example, occupations were listed for the two Paul Keatings who contested the division of Blaxland at the 1987 election). A similar principle should be extended to party names and abbreviations.[202]

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200 Submissions pS165

201 Submissions ppS42-3 (D.Pullen), ppS164-5 (AEC), ppS439-40, ppS550-8 (ALP) & pS1925 (Proportional Representation Society of Australia); transcript ppEM41-2 (AEC) & ppEM139-40 (Liberal Party)

202 Submissions pS166 (AEC)

6.46 ***Recommendation 44:***

> **that the Electoral Act be amended to enable registered party names or abbreviations, as appropriate, to be printed against the names of candidates, where two or more parties are seeking to use the same party identifier to endorse candidates at an election. An appropriate description should also be able to be used if necessary.**

Endorsement of a Candidate by More Than One Party

6.47 The Electoral Act provides that a candidate endorsed by two or more parties is taken to have been endorsed by one party only. Where that one party cannot be identified, the candidate must make a choice as to which party is the endorsing party.

6.48 The Attorney-General's Department has advised the AEC that an amendment to these provisions is necessary, in that the candidate is not obliged to provide a written notice specifying which party name is to be printed on the ballot paper.[203]

6.49 ***Recommendation 45:***

> **that section 169B of the Electoral Act be amended to provide that a candidate endorsed by more than one political party must specify to the AEC, in writing, the name of the political party to be printed on the ballot paper.**

Registration of Party Names

6.50 Related political parties are able to register similar names and identical abbreviations under Part XX of the Electoral Act. Separate and independent political parties are required to register names and abbreviations which sufficiently differentiate them from other registered parties. However, at the 1996 election

> two registered political parties with the same registered abbreviation were each intending to endorse Senate groups in New South Wales under the same abbreviation. Had this eventuated it would have caused considerable voter confusion. Voters would have had two groups of candidates seemingly standing for the same party. In many cases, voters would have been unable to confidently express their preferences on the ballot paper.
>
> The difficulty arose because, while the CEA permits parties which are related to each other to have similar registered names or abbreviations, it does not adequately cover the situation that arises when two parties that were related at the time of their registration have a "falling out".[204]

6.51 Where parties are no longer related, a party should be able to object to the retention by another party of a deceptively similar name. The Committee accepts the AEC's caution that a

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203 Submissions ppS166-7 (AEC)
204 Submissions pS165 (AEC)

situation may still arise where such an objection cannot be dealt with before the issue of the writs and the consequent suspension of the Register of Political Parties.

6.52 ***Recommendation 46:***

> **that the Electoral Act be amended to enable a registered political party to object to the continuing use of a party name and/or abbreviation by another party which obtained its registration by claiming related party status to that registered political party, where that relationship no longer exists.**

6.53 Also, NSW MLA Ms Clover Moore submitted that the Electoral Act should be amended to allow the registration of a party name including the words "Independent" or "Independent Party"[205] (the submission was concerned with the tax deductibility of donations to independent MPs; Chapter Eight refers). The AEC has advised that Ms Moore's reading of the Act appears to be incomplete, and that a party name such as "The Clover Moore Independent Party" might be permissible. Therefore no change is necessary.

205 Submissions pS85, pS88 (C.Moore MLA) & pS1468 (AEC)

CHAPTER SEVEN

ELECTION CAMPAIGNING

7.1 As is always the case after a Federal election, several MPs and political parties wrote to the inquiry to express concern about opponents' campaigning practices. In addition, a number of submission writers dealt with such policy issues as the regulation of "truth" in political advertising.

7.2 This Chapter examines sanctions against misleading advertising, authorisation of election advertising, the enforcement of certain provisions of the Electoral Act, the availability of electoral roll information to MPs and political parties, and various other issues.

Truth in Political Advertising

7.3 Section 329(1) of the Electoral Act makes it an offence to print, publish or distribute, during election periods, anything "likely to mislead or deceive an elector in relation to the casting of a vote". The AEC is responsible for applying the offence in relation to printed matter. The Australian Broadcasting Authority is responsible for applying the offence in relation to matter broadcast on radio or television.

7.4 During the 1996 election the AEC once again received complaints based on a mistaken belief that section 329(1) prohibits "untruths" in political advertising.[206] In fact, section 329(1) does not prohibit electoral advertising that is "untrue" and might mislead or deceive voters in deciding on their preferences. As decided by the High Court in *Evans v Crichton-Browne* (1981) 147 CLR 169, section 329(1) only prohibits advertising that misleads voters in the basically procedural aspects of how to mark a ballot paper and deposit it in the ballot box.

7.5 In 1984 the Electoral Act did contain, briefly, a section prohibiting untrue political advertising. Section 329(2) of the Act came into force in February 1984 and stated that

> A person shall not, during the relevant period in relation to an election under this Act, print, publish, distribute, or cause, permit or authorise to be printed, published or distributed, any electoral advertisement containing a statement -
>
> (a) that is untrue; and

206 Also, the AEC received a number of complaints under this section about allegedly misleading how-to-vote cards, where a major political party recommended a first preference vote for the Greens, the Democrat or the independent candidate, and a second preference vote for their own party. However as long as the origin of the material is clearly identifiable no offence is disclosed. See submissions pS176 (AEC), ppS342-5 (Cheltenham Branch of the Liberal Party), ppS359-64 (Senator M.Baume), ppS368-9 (J.Gash MP) & pS1474 (AEC); transcript ppEM324-6 (J.Gash MP).

(b) that is, or is likely to be, misleading or deceptive.

7.6 The first detailed examination of section 329(2) was carried out by this Committee's predecessor, the Joint Select Committee on Electoral Reform, in its August 1984 *Second Report*. The committee found the aim of "truth" in political advertising to be unachievable through legislation:

> political advertising differs from other forms of advertising in that it promotes intangibles, ideas, policies and images. Moreover, political advertising during an election period may well involve vigorous controversies over the policies of opposing parties...
>
> The Committee has noted the concern expressed by broadcasters and publishers on the inhibiting effect this section would have on political advertising. The Committee notes with some concern the fact that these difficulties were not raised during the debate on the 1983 Bill. This oversight suggests the need for legislation committees to closely examine complex Bills such as this, to ensure that the Parliament is aware of the full implications of every provision.

The committee concluded that

> it is not possible to control political advertising by legislation [and] section s.329(2)...should be repealed. In its present broad scope the section is unworkable and any amendments to it would be either ineffective, or would reduce its scope to such an extent that it would not prevent dishonest advertising. The safest course, which the Committee recommends, is to repeal the section effectively leaving the decision as to whether political advertising is true or false to the electors and to the law of defamation.[207]

7.7 Legislation repealing section 329(2) came into force in October 1984. Section 329(2) was also considered in 1994 by the previous committee, which concurred (non-government members dissenting) with the Joint Select Committee's findings. The committee added that it would be "entirely inappropriate" for the AEC to administer truth-in-advertising legislation, as such a role for the AEC would inevitably lead to perceptions that its neutrality had been compromised.[208]

7.8 During the last session of the 37th Parliament, the Australian Democrats moved an amendment to the *Electoral and Referendum Amendment Bill 1995* to reinstate section 329(2). The amendment passed the Senate but was not accepted by the House of Representatives. As noted elsewhere in this report, the Electoral and Referendum Amendment Bill lapsed when the 37th Parliament was dissolved.

7.9 This Committee agrees with its predecessors that the old section 329(2) is not the proper mechanism for enforcing "truth" in political advertising. Adding to the limitations identified in 1984 by the Joint Select Committee is the subsequent discovery of the implied constitutional freedom of political discussion (Chapter Three refers).

7.10 While it is not feasible to regulate assertions about the impact of a party's policies, this does not excuse deliberate misrepresentations of what a candidate's or party's stated policies actually are, or other distortions of straightforward matters of fact. If some of the misleading

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207 *Second Report* pp26-7
208 *The 1993 Federal Election* p109

statements made during elections were instead made in private enterprise, the perpetrators would most likely find themselves prosecuted under the Trade Practices Act. There is no valid reason for not applying similar principles to the factual content of election advertising.[209]

Possible Sanctions Against Misleading Advertising

7.11 The most practical form of sanction against misleading advertising is that provided for in section 113 of South Australia's Electoral Act. As explained by the AEC,

> Section 113 of the South Australian Electoral Act does not ban "untruths" in political advertising, which would require complex and subjective assessments of ideas, images and intangibles in political debate. Instead, the South Australian Electoral Act bans "inaccurate statements of fact", which is a much more practical basis for regulation.[210]

7.12 Section 113 provides that where an electoral advertisement contains a purported statement of fact which is "inaccurate and misleading to a material extent", a person who authorised, caused or permitted the publication of the advertisement shall be guilty of an offence. Section 113 applies to electoral advertisements published by any means, including radio and television. The penalty for a breach of section 113 is $1000 where the offender is a natural person, and $10 000 where the offender is a body corporate. However, it is a defence to such a charge for the defendant to prove that he or she took no part in determining the contents of the advertisement and "could not reasonably be expected to have known that the statement to which the charge relates was inaccurate and misleading".

7.13 Section 113 was recently considered in the case of *Cameron v Becker* (1995) 64 SASR 238, which involved an appeal to the South Australian Supreme Court. The case established that the offence created by section 113 requires the prosecution to prove that the alleged statement is inaccurate and misleading to a substantial or significant extent. Also, section 113 is directed to electoral advertisements containing statements of fact, not expressions of opinion, and the common law defence of an honest and reasonable mistake of fact is available. The Supreme Court further decided that the implied constitutional freedom of political discussion does not confer a right to disseminate false or misleading information and section 113 is therefore valid (the Committee notes the AEC's caution that an appeal to the High Court might have produced a different result).[211]

7.14 A version of the South Australian sanction should be introduced into the Commonwealth Electoral Act. The Committee notes that a Queensland parliamentary committee recently came to a similar conclusion, recommending that legislation be

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209 Submissions ppS72-3 (D.Blest), pS96 (C.Hughes), ppS175-8 (AEC), pS273, pS276 (I.Farrow), pS358 (Grey Power SA), ppS405-6 (P.Andren MP), pS439, pS474, ppS550-62 (ALP), ppS639-40 (E.Cameron MP), pS1363, pS1474, ppS1959-79 (AEC), ppS2143-4 (DPP), ppS2358-62 (Attorney-General's Department) & pS2389 (AEC); transcript ppEM54-7 (AEC), ppEM116-7 (ALP), ppEM137-8 (Liberal Party), ppEM273-4 (Qld Branch of the ICJ) & pEM504 (AEC)

210 Submissions pS177

211 Submissions pS1975

introduced in that State to prevent "inaccurate and misleading statements of fact" in political advertising.[212]

Method of Enforcement - the "Election Complaints Authority"

7.15 The AEC believes there is little point in regulating the factual content of political advertising if remedies are not available when the damage is actually occurring:

> To leave the enforcement of such law to post-election prosecutions is to shut the gate after the horse has bolted. The most obvious immediate remedy during the election period is the use of court-ordered injunctions to stop any apparently illegal activity from arising or continuing.[213]

7.16 A provision allowing post-election prosecutions, if properly drafted and enforced, will act as a deterrent to improper behaviour in the first place. Nonetheless there ought to be injunctive remedies available during an election.

7.17 The AEC has consistently argued that its reputation for neutrality would be impaired if it were to be given responsibility for a truth-in-advertising provision. The AEC proposed a separate statutory organisation, dubbed the "Election Complaints Authority" (ECA), to enforce the proposed sanction. Such an organisation

> could be created with its own functions and powers under the CEA, and relatively few staff, perhaps seconded in part from the AEC, and other government agencies and departments such as the Australian Federal Police and the Australian Broadcasting Authority.
>
> The ECA could be established at each federal election for a specified time period only, say one year from the announcement of a federal election [and] would ideally be provided with strong coercive powers of investigation, together with the power to seek injunctions as in section 383 of the CEA (but excluding candidates), to enable it to investigate and act upon complaints with the speed necessary to enable effective regulation in the relatively short time period of an election campaign.[214]

7.18 However, the South Australian experience suggests that the AEC's concerns are overstated. South Australia does not need a separate bureaucracy to administer the truth-in-advertising provision; as with the other provisions of South Australia's Electoral Act, the State Electoral Office administers section 113. There has never been a suggestion that the Electoral Office is incapable of performing this function or has somehow been compromised, even though prosecution action has taken place.

7.19 In conclusion, a provision similar to the South Australian section 113 should be introduced into Commonwealth law. The AEC should be responsible for assessing whether there is sufficient evidence to refer complaints to the DPP, as is the case with other offence provisions in the Electoral Act. If necessary, the AEC should be provided with additional resources to enable it to fulfil this new responsibility.

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212 Legal, Constitutional and Administrative Review Committee, *Truth in Political Advertising* (Report no.4, December 1996)

213 Submissions pS1967

214 Submissions ppS1970-1 (AEC)

7.20 ***Recommendation 47:***

> **that the Electoral Act and the Broadcasting Act be amended to prohibit, during election periods, "misleading statements of fact" in electoral advertisements published by any means.**

Definition of "Electoral Matter"

7.21 The Electoral Act defines "electoral matter" in very broad terms. Under section 4(1) of the Act, "electoral matter" means matter intended or likely to affect voting in an election. Section 4(9) of the Act further states that

> without limiting the generality of the definition of "electoral matter" in subsection (1), matter shall be taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on:
>
> (a) the election;
>
> (b) the Government, the Opposition, a previous Government or a previous Opposition;
>
> (c) the Government or Opposition, or a previous Government or Opposition, of a State or Territory;
>
> (d) a member or former member of the Parliament of the Commonwealth or a State or of the legislature of a Territory;
>
> (e) a political party, a branch or division of a political party or a candidate or group of candidates in the election; or
>
> (f) an issue submitted to, or otherwise before, the electors in connection with the election.

7.22 The AEC has noted the much more precise definition of "election advertising" in South Australia's legislation:

> the definition in the South Australian legislation is rather more attractive. Ours is terribly broad and gets into all sorts of trouble. The wording there of 'an advertisement or document calculated to affect the result of an election' seems attractive because, if somebody is putting sausages on an election special, or cars or something, it is clearly not intended to have such an effect.[215]

7.23 Obviously the Commonwealth definition of "electoral matter" will need to be considered further when the proposed sanction against misleading advertising is drafted.

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215 Transcript pEM504

The Authorisation Provisions of the Electoral Act

7.24 The authorisation provisions of the Electoral Act, and instances of improperly authorised material, were examined in several submissions to the inquiry.[216] Some proposed amendments to the authorisation provisions are considered below.

Section 328 of the Electoral Act

7.25 Section 328 of the Electoral Act applies to electoral matter that is printed, published and distributed, including videos. The section provides that at the end of an electoral advertisement, handbill, pamphlet, notice or video (but excluding a newspaper advertisement announcing a meeting), there must appear the name and address of the person who authorised the material. A post office box cannot be nominated as the address. At the end of material printed other than in a newspaper, the name and place of business of the printer must also appear. Section 328 applies at all times, not just during election periods, and given the wide definition of "electoral matter" in section 4 of the Act applies to a broad range of publications. However certain articles, such as car-stickers, T-shirts and business cards, are excluded from the requirements of section 328.

7.26 The AEC receives many complaints of improperly authorised advertising where the source of the material is nonetheless apparent - for example, leaflets or how-to-vote cards without the name and place of business of the printer. In such cases:

> the AEC and/or the DPP usually assesses these as technical breaches only, and, where possible, the AEC will contact the authors to press for compliance with the legislation. The AEC may require an undertaking that any such material technically in breach in section 328 will not be distributed further, and an attempt be made, where possible, to retrieve from circulation any material already distributed. In all cases dealt with in this manner at the 1996 federal election, the AEC obtained the full cooperation of the authors of such material, who were generally surprised by the existence of the authorisation requirement, and eager to avoid any further breaches.[217]

7.27 The AEC's (and the DPP's) reluctance to pursue "technical" breaches to the point of prosecution was the subject of extensive comment by, in particular, the ALP in its submission to the inquiry. As noted by the AEC,

> What seems to be put by way of submission to this Committee - not our submission but others - is that this is unacceptable, that we ought not to be having these so-called technical breaches. Either it is a breach and it should lead to prosecution or it should not.[218]

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216 Submissions pS01 (Reid Federal Electorate Council of the ALP), ppS172-5, ppS179-80 (AEC), ppS316-8, ppS320-33 (W.Tuckey MP), pS352 (P.Filing MP), ppS367-9 (J.Gash MP), pS390 (T.Worth MP), ppS405-9 (P.Andren MP), ppS422-5 (T.Robinson), pS430, ppS437-9, ppS441-2, ppS494-549, ppS574-602 (ALP), ppS1383-95 (National Party of Australia - NSW), pS1459, pS1475, pS1479 & ppS2386-7 (AEC); transcript ppEM48-54 (AEC), ppEM321-7 (J.Gash MP), ppEM334-42 (P.Filing MP), ppEM345-52 (W.Tuckey MP) & pEM395 (AEC)

217 Submissions ppS174-5 (AEC)

218 Transcript pEM49

7.28 The AEC submitted that section 328 should be amended so that where there can be no reasonable doubt as to the individual who, or body which, is responsible for an electoral advertisement, the authorisation requirements would be taken to be satisfied. This is essentially the current policy in respect of candidates' business cards, and would be consistent with the attitude taken by the DPP that it is not in the public interest to prosecute "technical" breaches where the origins of a publication are clear.

7.29 ***Recommendation 48:***

> **that section 328 of the Electoral Act and section 121 of the Referendum Act be amended, to provide that where an electoral advertisement is presented so that the AEC believes there is no reasonable doubt as to the individual who, or body which, is responsible for its publication, the authorisation requirements will be taken to be satisfied. The authorisation provisions should still specify that correct name and (street) address details must be clearly displayed.**

7.30 Also, Mr Wilson Tuckey MP suggested that the name of the person who actually pays for election advertising ought to be displayed on that advertising. Mr Tuckey provided the inquiry with dubious advertisements which seem to have been paid for by unidentified groups, and then authorised by someone without any financial wherewithal:

> What is the value of Section 328-332 if it can be simply subverted by employing a penniless individual as a front...there needs to be a requirement that the Electoral Commission cannot shrug such situations off by the simple process of claiming the law has been met, provided a person can be produced as the legitimate authority associated with the publication of the advertisement.[219]

7.31 While Mr Tuckey's concerns are understandable his proposed solution is probably not workable. Information as to who actually pays for election advertising is available when election returns are filed under the financial disclosure provisions of the Electoral Act (discussed further in Chapter Eight).

7.32 Lastly, Mr Peter Andren MP and the National Party of Australia (NSW) suggested that Australia Post should be required to check bulk mail-outs of election material and not deliver the material where the authorisation requirements are not met.[220]

7.33 While all distributors of campaign material should be aware of the authorisation requirements, the Committee agrees with the AEC that

> any requirement under the CEA that Australia Post be responsible for the identification, assessment and evaluation of all open and unaddressed mail that might be in breach of the authorisation provisions of the CEA, during the election period, would represent a significant and probably intolerable burden on that agency.[221]

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219 Submissions ppS317-8 (W.Tuckey MP)

220 Submissions ppS405-9 (P.Andren MP), ppS1383-95 (National Party of Australia - NSW) & ppS2386-7 (AEC)

221 Submissions pS2387

7.34 In any case the proposed requirement would not prevent behaviour of the sort identified by Mr Andren and the NSW National Party, given that it would not extend to material distributed by means other than Australia Post.

Section 331 of the Electoral Act

7.35 Section 331 of the Electoral Act provides that if an article in a newspaper contains electoral matter and is inserted "for reward", it is an offence for the word "advertisement" to not appear as a headline in letters not smaller than 10 point. The ALP advised the inquiry that

> section 331 is limited to newspapers and does not extend, for instance to weekly or monthly magazines...It is, of course, also not clear to the casual reader whether the "electoral matter" has as required by section 331 been inserted for reward. It may be that it has been inserted for free by the owner or the editor... section 331 [can thus] be thwarted where electoral advertisements are not charged for.[222]

7.36 The ALP claimed that based on its experience at the 1996 election, section 331 is "virtually inoperable". The Committee accepts that the provision should be amended.

7.37 ***Recommendation 49:***

> **that section 331 of the Electoral Act ("heading to electoral advertisements") be amended to ensure that a) as well as newspapers it applies to other periodical newsheets and magazines that accept paid advertisements, and b) it applies to advertisements containing electoral matter whether inserted "for reward" or free of charge by the owner or editor of the publication.**

Section 332 of the Electoral Act

7.38 Section 332 of the Electoral Act makes it an offence, during election periods, to print, publish or distribute "a newspaper, circular, pamphlet or 'dodger' containing an article, report, letter or other matter containing electoral matter", unless the names and addresses of the authors are set out at the end of the article, report etc. During the 1996 election the AEC received a number of complaints under section 332, which were dealt with by seeking compliance with the Act rather than by prosecution.

7.39 The DPP has advised the AEC that other than letters to the editor and articles in newspapers, the provisions of section 332 are already covered by section 328 of the Act. Section 328 operates all the time rather than just during election periods, and specifies penalties not exceeding $1000 for a natural person or $5000 for a body corporate, as against $500 and $2500 under section 332.

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222 Submissions pS441

7.40 The DPP has further noted that section 332 is a little-used provision - there has never been a prosecution under this section - and a highly technical offence, with a lack of clarity as to its operation and application.[223]

7.41 ***Recommendation 50:***

> **that section 332 of the Electoral Act and section 125 of the Referendum Act ("authors of reports etc. to be identified") be repealed.**

Policing Improper Campaign Practices

7.42 The inquiry revealed a divergence of views as to the AEC's role in policing improper campaign practices, particularly on polling day itself. The opinion of several Members of Parliament was reflected in the evidence of Mrs Joanna Gash MP:

> In every election there are actions taken by candidates that are clear breaches of the electoral law but are done so in the knowledge that the Australian Electoral Commission rarely if ever pursues any inquiry. This lack of investigation before and just as importantly after the election has only encouraged people to continue their behaviour election after election.[224]

7.43 In response to such views, the AEC asserted that

> the sorts of interventions demanded of AEC officers by some candidates in the heat of the campaign period, and particularly on polling day, are in many cases totally unreasonable. Those demanding such interventions do not appear to appreciate that AEC officers do not have the equivalent of police powers to, for example, seize and/or destroy offensive material. Nor should they. If AEC officers were to be drawn into the often heated political arguments that occur just prior to and on polling day, it could seriously interfere with their primary duties.[225]

7.44 Where an offence under the Electoral Act is apparent, the AEC will first attempt to obtain compliance with the Act. A request for co-operation or a warning is all that is considered necessary in most cases. Where problems are of a local nature and are not provided for under the Electoral Act, State police may be called in by the persons affected.

7.45 In a more intractable case of an offence under the Electoral Act, case assessment by AEC officers with advice from the DPP will indicate whether an injunction is necessary or whether prosecution is warranted, assuming that the offender's identity can be established. Where prosecution is possible the AFP may be asked to investigate. This may involve the seizure by the AFP of, for example, some campaign signs and posters for the purposes of preparing an evidence brief, but does not extend to wholesale removal and confiscation. AEC officers have no powers to remove or confiscate private property.[226]

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223 Submissions ppS179-80 (AEC); transcript pEM53 (AEC). See also submissions pS442 (ALP)
224 Submissions pS368
225 Submissions pS1458 (AEC)
226 Submissions ppS1458-9 (AEC)

7.46 The AEC did not support Mr Paul Filing MP's suggestion that an AEC investigations unit be created, possibly with AFP officers attached.[227] The AEC did however advise that it and the AFP have established a joint committee to co-ordinate investigation referrals on electoral matters. Also, the AFP informed the inquiry of a range of measures to enhance its service to the Commonwealth, including a maximum 28 day turn-around on acceptance or rejection of referrals from Commonwealth agencies.[228]

7.47 These measures are welcome. However the Committee doubts they will prove a sufficient response to the widespread belief that some aspects of political campaigning are deteriorating, and were worse in 1996 than at previous Federal elections. The AEC should take greater responsibility for ensuring compliance with the Electoral Act and, to ensure adequate assistance from the AFP and discourage improper practices in the first place, the level of penalties should be substantially increased.

Penalty Levels

7.48 The AFP's prioritisation guidelines require it to focus on major crime, which may be identified according to the level of the penalty involved. Consequently the AEC has not always been able to obtain the AFP's services:

> Although the AEC appreciates the assistance of the AFP in investigating electoral offences, it is becoming increasingly difficult to obtain their agreement to the diversion of their resources to investigate many electoral offences, because the low level of penalties under the CEA suggest low prioritisation relative to other major crime referrals to the AFP...The AEC has recently had constructive discussions with the AFP in an effort to obtain a better mutual understanding of each agency's concerns.[229]

7.49 An indexed penalty unit system was incorporated into the Crimes Act in 1992. While the system applies to the Electoral Act and the Referendum Act as to most other Commonwealth statutes, the base level of penalties in the Electoral Act remains low.[230]

7.50 ***Recommendation 51:***

> **that a review of the level of penalties for offences under the Electoral Act and the Referendum Act be undertaken by the AEC with the assistance of the Attorney-General's Department, with a view to bringing the penalties into line with penalty rates for comparable offences under other Commonwealth statutes.**

227 Submissions pS354; transcript ppEM332-41 (P.Filing MP)
228 Submissions ppS1985-9 (AFP); transcript ppEM37-8 & ppEM392-5 (AEC)
229 Submissions pS216
230 Submissions ppS215-7 (AEC); transcript pEM79 (AEC) & pEM351 (W.Tuckey MP)

7.51 The above recommendation is made in this Chapter because the relevant evidence was considered in the context of election campaigning. The recommendation of course also applies to penalties for offences such as multiple voting.

Provision of Elector Information to Political Parties and MPs

7.52 Sections 91(2) and 91(5) of the Electoral Act provide that after each general election, the latest printed rolls and "habitation indexes" (name and address information from the rolls reformatted in street address order) shall be copied to registered political parties, Senators and Members of the House of Representatives. The rolls and habitation indexes only show name and address information. Except for a limited number of prescribed authorities, section 91(9) of the Electoral Act provides that

> ...the Electoral Commission shall not provide any person with any information which discloses particulars of the occupations, sex or dates of birth of electors.

7.53 The name and address information released under section 91 may only be used for "a permitted purpose". For Members of Parliament and political parties, the permitted purposes are:

- any purpose in connection with an election or referendum;
- monitoring the accuracy of roll information; and
- the performance by a Member or Senator of his or her functions in relation to persons enrolled for the relevant division, State or Territory.

7.54 In addition, the disclosure or commercial use of roll or habitation index information is expressly prohibited under section 91B of the Act. The penalty specified is $1000.

Alleged Unauthorised Release of Information

7.55 The ALP informed the inquiry that the successful candidate for the division of the Northern Territory, the Hon Nick Dondas AM MP, claimed during the election to have received information about certain electors' ages through "a source in the Australian Electoral Commission".[231] If true such disclosure by the AEC would have been in breach of section 91(9) of the Electoral Act.

7.56 The AFP investigated this matter and provided a report to the AEC. On 6 November 1996 the Electoral Commissioner issued the following statement:

> The date-of-birth information, whilst originating from the AEC, had been provided to the Northern Territory Electoral Office as a matter of course for purposes related to the conduct of the 1994 Territory election. This was done

231 Submissions pS436, ppS487-91 (ALP), ppS1995-2005 (M.Hickey MLA), pS2054, pS2056 & ppS2062-76 (AEC); transcript ppEM119-20, pEM122 (ALP), ppEM144-6 (Liberal Party), ppEM449-51 (D.Melham MP), ppEM466-9 & ppEM471-3 (AEC)

> under the Joint Roll Arrangement between the Commonwealth and the NT Governments...the AFP investigation has shown that the computer cartridge containing the date-of-birth information was transferred to a Brisbane based data management organisation called Feedback Services from the Department of the Chief Minister by a person or persons unknown...
>
> ...As the data was properly supplied by the AEC, according to an intergovernmental agreement and in response to a request from the NT Electoral Office, what happened to it after it passed to the NT Electoral Office was no longer subject to Commonwealth law. In view of this the DPP has advised that no prosecution in relation to this matter was necessary or appropriate under Commonwealth law...whether any offences may have been committed under NT law was a matter for the NT authorities.[232]

7.57 The Committee does not support calls for a review of the joint roll arrangements between the Commonwealth and the States and Territories. The constraints placed on the use of State and Territory electoral information are for the relevant governments to decide, and were the information not provided by the AEC it would, for the States' and Territories' own purposes, be collected in some other way.

7.58 As noted by the Electoral Commissioner, whether any offences have been committed under Northern Territory law is a matter for Northern Territory authorities.

Provision of Gender and Age Details

7.59 In public hearings Mr Lynton Crosby, the Deputy Federal Director of the Liberal Party, suggested that electors' salutation, postal address, date of birth and gender details should be provided to political parties and MPs[233]:

> We have a situation now where MPs and parties have a very limited capacity to communicate in a more effective way, so they have to always deal with broad messages or they cannot get to people who have a particular concern that needs to be addressed. So my response to all the debate about this issue is: let us have a system which has worked well. I am not aware of any circumstance where any political party has been found guilty of breaching the provisions under which it is provided the electoral roll. Quite strict provisions are provided for in the Electoral Act [which] makes it clear you can use the electoral roll for only certain purposes. We would be quite happy for the penalties to be magnified as much as you want.[234]

7.60 The AEC expressed some concern about providing salutation information, noting that as such information is not necessary for official purposes it is not currently collected or recorded.[235] The Privacy Commissioner, Mr Kevin O'Connor, also expressed reservations about the release of gender and age information, stating that

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232 Transcript pEM469 (AEC)

233 Submissions pS270, pS277 (I.Farrow), pS625, ppS628-9 (Liberal Party), pS1471, pS1494, pS1496 (AEC), ppS1861-2 (Privacy Commissioner) & ppS2056-7 (AEC); transcript ppEM122-4 (ALP), pEM126, ppEM145-9 (Liberal Party) & ppEM475-8 (AEC)

234 Transcript ppEM145-7

235 Submissions pS1494

> Where personal information is collected compulsorily I consider that additional uses or disclosures should only be authorised if there is a significant and clearly demonstrated public interest in that happening.[236]

7.61 However, age, salutation and gender information would greatly assist MPs and political parties in their basic role of communicating with electors. The increased number of electors from non-English speaking backgrounds has made it more difficult to discern gender solely by examining names, and MPs frequently report that their constituents take offence at incorrect salutations.

7.62 Information collected by the AEC on gender, occupation and/or age - in addition to names and addresses - is already legally available to State and Territory MPs in NSW, Queensland, Western Australia and the Northern Territory.[237] Also, the *Electoral and Referendum Amendment Bill 1995*, which did not gain passage before the Parliament was dissolved for the 1996 Federal election, contained a proposed amendment to section 91 which would have allowed the provision of gender information to MPs and registered political parties, as well as to medical researchers and health screening surveys.[238]

7.63 ***Recommendation 52:***

> **that the enrolment form be amended to provide for electors' salutation details, and that section 91 of the Electoral Act be amended so that electors' gender, age and salutation details are provided to Members of Parliament and registered political parties, subject to a) sections 91A(1A)(c) and 91A(2)(c) of the Act being amended to make clear that the "permitted purposes" in relation to MPs and registered parties include research purposes, and b) the penalties for misuse specified in sections 91A and 91B of the Act being increased from $1000 to $10 000 (the outcome of the review of penalties provided for in Recommendation 51 should not delay the proposed increase).**

7.64 Each time political parties and MPs are provided with the upgraded elector data, they should be formally advised by the AEC of the penalties for misusing the information.

Computer Technology and Commercial Use of Roll Information

7.65 Current technology makes it quite feasible for private companies to scan the rolls and produce computerised machine-readable versions, as noted by the AEC[239]:

> an important issue [is] the speed with which technology is changing. Our legislation, section 91 and so on, is written in very old-fashioned terms and it

236 Submissions pS1862
237 Submissions pS2056
238 Submission pS2057 & pS2078 (AEC)
239 Submissions ppS2377-9; transcript pEM473

> should be updated. We would certainly like to do something about that because computer technology is just racing ahead of the legislation.[240]

7.66 ***Recommendation 53:***

> **that sections 89 to 92 of the Electoral Act, concerning improper use of roll information, be reviewed to take account of developments in computer technology. The existing entitlements of MPs and registered political parties should be maintained.**

Other Issues

How-to-Vote Material

7.67 The use of how-to-vote material is always the subject of debate after Federal elections.[241] Calls are often made for how-to-vote cards to be abolished or restricted, for reasons including cost, environmental waste, harassment of voters and the difficulties faced by smaller parties and independent candidates in distributing the cards.

7.68 The Committee does not believe that how-to-vote cards should be banned. Apart from the practical aspects of enforcing such a ban, there are civil liberties implications in refusing candidates and their supporters permission to provide material to voters. Also, for many supporters of political candidates providing how-to-vote material is one of the few means by which they can participate in a campaign.

"Robson's Rotation"

7.69 The provision of effective how-to-vote material is the reason why the Committee is not enthusiastic about rotation of names on ballot papers[242], 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). Donkey voting should instead be eliminated through the abolition of compulsory voting, as recommended in Chapter Three (Preferential and Compulsory Voting).

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240 Transcript pEM473. See also the AEC's submission dated 21 October 1992 to the House of Representatives Standing Committee on Legal and Constitutional Affairs' Inquiry into Confidential Information (submissions ppS461-84)

241 Submissions pS28 (R.Parkinson), ppS44-7 (National Party of Australia (WA)), pS74 (P.Neuss), ppS78-9 (Kooyong Electorate Branch of the Australian Greens), pS96 (C.Hughes), pS107 (A.Betts), pS271 (I.Farrow), pS349 (B.Joy), pS360 (Senator M.Baume), ppS433-4 (ALP), ppS618-9 (D.Freeman), pS633 (R.Johnston MP), ppS637-8 (E.Cameron MP), pS665 (J.Rydon), pS1463, pS1478 (AEC), ppS1854-7 (A.Jeffrey), pS1867 (B.Martin), pS1880, pS1893, ppS1898-900 (Proportional Representation Society of Australia) & pS2125 (Electoral Reform Society of SA); transcript ppEM196-8 (D.Freeman)

242 Submissions pS271 (I.Farrow), ppS1879-80, ppS1908-10, pS1919 & ppS1929-31 (Proportional Representation Society of Australia)

Electoral Bribery

7.70 Section 326 of the Electoral Act states that

> a person shall not ask for, receive or obtain, or offer or agree to ask for, or receive or obtain, any property or benefit of any kind, whether for the same or any other person,

or

> give or confer, or promise or offer to give or confer, any property or benefit of any kind

on the understanding that a vote, candidature or candidate's position in a Senate group is likely to be influenced. The penalty specified in the Act is $5000 or imprisonment for two years, or both. Section 326 does not apply to a declaration of public policy or a promise of public action.[243]

7.71 The ALP submitted to both the 1993 election inquiry and this inquiry that section 326 should be amended, to clearly exempt routine campaign activities:

> The section was of concern to a large number of individual ALP candidates in respect to both their own activities and in some instances actions of their opponents...The difficulty [that] arises for all candidates is to determine at what point the extention of a courtesy, such as the provision of a cup of tea and a biscuit, becomes the giving and conferring of "any property or benefit of any kind".[244]

7.72 While the previous committee recommended that section 326 be examined, it cautioned that

> If the clarification sought cannot be achieved without risking the effectiveness of the bribery provisions, the Committee agrees that amendments should not be considered. There have been no major cases of electoral bribery brought before the courts in the entire history of federal parliamentary elections, and the chances of a candidate being charged and prosecuted for the sorts of trivial activities mentioned by the Labor and Liberal parties would appear to be slight.[245]

7.73 On the advice of the DPP, the AEC has consistently held that the provision of tea and biscuits and the conduct of "happy hours", to use examples cited by the ALP, are not direct attempts to influence or affect votes and therefore do not amount to electoral bribery. Encouraging people to meet a candidate and make their own decision as to who to vote for is distinguished from offering incentives to vote in a specific way.

7.74 The ALP did not offer an alternative to the current bribery provisions. The Committee does not recommend any amendment to section 326 of the Electoral Act.

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243 Submissions ppS436-7, ppS493-8, ppS548-9 (ALP) & ppS1490-2 (AEC)
244 Submissions ppS436-7
245 *The 1993 Federal Election* p149

The Internet

7.75 The 1996 Federal election was the first where widespread use was made of the Internet by both the AEC and the political parties.[246] The AEC informed the inquiry that

> this early experience...suggests that there are some significant emergent legal problems in relation to copyright, defamation and the authorisation of electoral advertising, for example, that may require legislative attention when overall Government policy on the regulation of the Internet is established.[247]

7.76 The DPP has advised that the authorisation requirements of the Electoral Act (sections 328 and 332) do not apply to material distributed over the Internet. However, section 329 (misleading or deceptive publications) and section 329A (the "Langer" provision discussed in Chapter Three) do apply to material distributed over the Internet. The differing approaches have been explained by the DPP thus:

> Where the intention of Parliament was to confine the application of the offence to printed matter only, as in section 328, then "publish" and "distribute" cannot be read to apply to the Internet. By contrast, the intention of Parliament in relation to section 329 was that it be read to apply to electronic media as well as printed media. This is made apparent by the explicit inclusion of radio and television broadcasts, as well as print, in the coverage of the provision.[248]

7.77 The AEC suggested that before any recommendations are made on extending the offence provisions of the Electoral Act, it might be prudent to wait for clarification of government policy on the Internet. The Committee accepts this advice, but only on the proviso that the government provides clear guidance before the next election.

Canvassing at Hospitals and Nursing Homes

7.78 Sections 226(5) and 340(1) of the Electoral Act prohibit canvassing at those institutions appointed as "special hospitals" - hospitals, nursing homes, etcetera visited by mobile polling teams - as soon as an election writ is issued. However, the gazettal of special hospitals usually only occurs some two weeks after the issue of the writ. Uncertainty over the rights of candidates in the intervening period, particularly at those institutions which were special hospitals at the preceding election, was noted in evidence from the ALP and Mr Graham Smith.[249]

7.79 The prohibition on canvassing at hospitals and special hospitals should commence on the Monday before polling day (being the first day on which mobile polling can commence at such establishments), and the gazettal of special hospitals should be effective on an ongoing basis, in the same manner as for "static" polling places. The gazettal would thereby stay in force until an abolition was gazetted.

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246 Submissions pS137, ppS146-7, ppS218-20 (AEC), ppS434-6 & pS486 (ALP); transcript pEM138 (Liberal Party)

247 Submissions pS137

248 Submissions pS219 (AEC)

249 Submissions pS430 (ALP), pS1432 & ppS1447-8 (G.Smith); transcript ppEM101-4 (ALP), ppEM135-7 (Liberal Party) & ppEM260-1 (G.Smith)

7.80 ***Recommendation 54:***

> **that the Electoral Act be amended so that the prohibition on canvassing at "special hospitals" and hospitals that are polling places applies from the Monday before polling day to the expiration of polling day, and so that the gazettal of special hospitals is effective on an ongoing basis.**

7.81 Also, the Australian Private Hospitals Association (APHA) expressed frustration about the requirements of section 325A(1) of the Electoral Act.[250] Section 325A(1) provides that

> A person who is the proprietor of, or an employee of the proprietor of, a hospital or nursing home shall not do anything for the purpose of influencing the vote of a patient in, or resident at, the hospital or nursing home.
>
> Penalty: $1000 or imprisonment for 6 months, or both.

7.82 Section 325A(1) frustrated the APHA's attempt to run a public information campaign in the six weeks preceding the election:

> The planned activities were unambiguously non-partisan with the chosen theme for the campaign being, "PRIVATE HEALTH IS A PUBLIC ISSUE"...One element of the campaign involved display at hospitals of posters containing the campaign theme.[251]

7.83 While the APHA might have regarded its proposed campaign as "unambiguously non-partisan", in this sensitive policy area there is no guarantee that others would have shared the APHA's view. In this context, the Committee notes a complaint by the ALP about alleged canvassing of residents by the Chairman of Swan Nursing Homes in Western Australia.[252]

7.84 The Committee does not recommend any amendment to section 325A(1) of the Electoral Act.

Canvassing at Pre-Poll Voting Centres

7.85 Section 340(1) of the Electoral Act prohibits, on polling day, canvassing within six metres of the entrance to a polling booth. Mrs Ricky Johnston MP and Mr Graham Smith submitted that the "six metre rule" should also apply to pre-poll voting centres.[253]

7.86 However, application of the six-metre rule would be impractical at many of the locations used for pre-poll voting. Presiding officers and candidates' representatives should have the discretion to come to sensible arrangements at individual polling places.

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250 Submissions ppS283-5 (APHA) & pS1473 (AEC)
251 Submissions pS283
252 Submissions ppS430-1 & ppS474-8 (ALP); transcript ppEM103-4 (ALP) & pEM135 (Liberal Party)
253 Submissions pS633 (R.Johnston MP), pS1431 & pS1444 (G.Smith)

Co-ordination Between the States and the AEC

7.87 The 1996 Federal election coincided with a State election in Tasmania. The Liberal Party and the ALP complained to the inquiry about, respectively, the application to Federal campaigning of the State election media blackout, and a statement from Tasmania's Chief Electoral Officer banning canvassing for either election within 100 metres of returning offices, so as to ensure compliance with a State prohibition on such canvassing.[254]

7.88 In response to the parties' complaints, the AEC advised the inquiry that the Australian Electoral Officer (AEO) for Tasmania and the State's Chief Electoral Officer

> went to great pains to ensure there was no confusion in the minds of the officials or the public regarding the different arrangements between the federal and State elections. There were joint training sessions of polling officials where the differences were reinforced...
>
> The close proximity of the 1996 federal election and the 1996 Tasmanian State election...did inevitably provide some difficulties for the political parties, particularly in their political advertising campaigns, but in the circumstances the elections went well and it is noted that no disputes have been filed with the court.[255]

7.89 Obviously, there is a need for close liaison between the AEC and its State counterparts when simultaneous election campaigns are being conducted. As this is an infrequent occurrence the Committee does not see a need to make any recommendation.

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254 Submissions ppS433-4, ppS481-5 (ALP), ppS630-1 (Liberal Party) & pS1490 (AEC); transcript ppEM105-6 (ALP) & pEM127 (Liberal Party)

255 Submissions pS1490

CHAPTER EIGHT

ELECTION FUNDING AND FINANCIAL DISCLOSURE

The Funding and Disclosure Provisions

8.1 Part XX of the Electoral Act provides for public funding of election campaigns, annual financial disclosure by registered political parties and donors, and post-election financial disclosure by parties, candidates, and others.

8.2 Public funding is paid if a candidate or Senate group receives at least four percent of the formal first preference vote for the relevant election. The Electoral Act specifies a base funding rate of $1.50 per first preference vote won. As the funding rate is indexed every six months, the amount payable at the 1996 election was approximately 157 cents per vote. The total payment for the election was $32 157 000.

8.3 Public funding was implemented on the advice of this Committee's predecessor, the Joint Select Committee on Electoral Reform, in its September 1983 *First Report*. The committee advocated public funding for reasons also endorsed by this Committee:

> the concept of public funding centres on the essence of legitimate political decision-making, that is, ensuring that no element in the political process should be hindered in its appeal to electors nor influenced in its subsequent actions by lack of access to adequate finance.[256]

8.4 Part XX of the Electoral Act also provides that candidates, parties, donors and others must publicly disclose certain amounts received and paid during elections. Registered political parties are required to lodge returns disclosing election expenditure. Other organisations and individuals taking part in an election are required to disclose details of certain expenditures and gifts received. Broadcasters and publishers are required to disclose details of electoral advertising.

8.5 In addition to the election return, registered political parties and associated entities must furnish an annual return disclosing details of amounts received, amounts spent and debts outstanding at the end of the financial year. The returns from associated entities must disclose capital deposits. Donors to a registered party (or a State branch thereof) must also provide an annual return where the donations to that party total $1500 or more for the financial year.

8.6 Election disclosure returns are made available for public inspection 24 weeks after polling day. Annual disclosure returns are made available for public inspection from 1 February in the following year.

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256 *First Report* p155

Proposed Amendments

8.7 In 1995 the funding and disclosure provisions were significantly amended as a result of the previous committee's June 1994 report *Financial Reporting by Political Parties*. The major amendments were:

- the new base funding rate of $1.50 per first preference vote (Senate and House of Representatives) was set and public funding became an entitlement to be paid automatically, rather than a reimbursement scheme requiring vouchers to be submitted in support of expenditure;
- returns of election expenditure by political parties, separate from the annual returns, were reintroduced, and the definition of electoral expenditure was amended to include direct mailing;
- a requirement that political parties disclose any sum of $1500 or more received from a person or organisation during a financial year was amended, so that individual amounts of less than $500 need not be counted when determining if the $1500 sum has been reached (paragraph 8.9 refers); and
- returns were introduced for certain organisations closely associated with registered political parties.

8.8 The Liberal Party, the ALP and others have now called for further changes to the funding and disclosure provisions.[257] Their proposals are examined below.

Reporting Thresholds - Amounts Received

8.9 Section 314AC of the Electoral Act provides that political parties must disclose a sum of $1500 or more received from any one person or organisation during a financial year. Individual amounts of less than $500 need not be counted when calculating whether the $1500 sum has been reached. The $500 threshold was recommended by the previous committee to relieve political parties - in particular party volunteers in local branches - from the administrative burden of reporting every minor transaction.[258]

8.10 The Liberal Party submitted to this inquiry that the $1500 reporting figure should be raised to $10 000, with individual amounts below $1500 not required to be counted. In public hearings the ALP's National Secretary supported the proposed increase to $1500, although he did not support an increase to $10 000 for reporting of total amounts received.[259]

8.11 The AEC expressed the view that an increase in the $500 threshold would not significantly reduce the workload of party branch volunteers, and that donors can already

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257 Submissions pS18 (M.Doyle), ppS52-3 (J.Bombardieri), ppS85-8 (C.Moore MLA), pS135, ppS140-2, pS164, pS174, ppS209-10, pS218, pS221, pS265 (AEC), ppS268-9, ppS272-4, pS278 (I.Farrow), pS349 (B.Joy), pS434, pS444 (ALP), ppS625-7, ppS629-30 (Liberal Party), pS657 (A.Rocher MP), pS1395A (G.Campbell MP), pS1468, ppS1492-6 (AEC); transcript ppEM112-6, pEM120 (ALP), pEM126, pEM141 (Liberal Party), pEM342 (P.Filing MP), ppEM351-3 (W.Tuckey MP) & ppEM435-6 (AEC)

258 *Financial Reporting by Political Parties* p5

259 Transcript pEM115

> make donations of $1,499 (i.e. just under the current disclosure threshold of $1,500) to each of [the State and national] branches of a party. Raising the threshold to $10,000 will mean that donations of $9,999 could be made to each of the nine branches of the same party, totalling $89,991, and not be disclosed.[260]

8.12 The disclosure thresholds should more accurately reflect current financial values. The scenario painted by the AEC - donors going to extraordinary lengths to avoid disclosure of gifts totalling $90 000 - is in most cases unlikely. Even accepting such a possibility, a sum of just $90 000 spread over the State and national branches of a party is hardly likely to engender corruption.

8.13 However, in response to the AEC's and ALP's concerns the Committee recommends that $5000, rather than the $10 000 suggested by the Liberal Party, be set as the figure for reporting total amounts received.

8.14 ***Recommendation 55:***

> **that section 314AC(1) of the Electoral Act be amended so that political parties are required to disclose a total amount of $5000 or more, rather than $1500, received from a person or organisation during a financial year.**

8.15 ***Recommendation 56:***

> **that section 314AC(2) of the Electoral Act be amended to raise from $500 to $1500 the threshold for counting individual amounts received.**

Disclosure by Donors

8.16 Section 305B of the Electoral Act provides that within 20 weeks after the end of the financial year, any person who in that year made gifts totalling $1500 or more to a registered political party (or a State branch of that party) must furnish a return to the AEC.

8.17 The Liberal Party noted that the previous committee had recommended that the separate donor's return be abolished.[261] The Party stated that it too does not support the requirement for donors as well as political parties to lodge returns.

8.18 However, the AEC has consistently advised that the combined effect of scrapping donors' returns and retaining a threshold below which individual amounts received by political parties do not have to be counted would be, in effect, to make the disclosure of donations a purely voluntary arrangement:

> Without a separate donor return, a donor would be able to donate any amount to a party without it being disclosed as long as that donation was made in lots of less than $500. The AEC believes that such a loophole would be easily exploited...

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260 Submissions pS1496

261 *Financial Reporting by Political Parties* p6

> It should also be noted that party returns do not distinguish between donations and other receipts. Therefore, without donor returns there is no means by which persons from whom a political party has received $1,500 in the normal course of business can be distinguished from donors.[262]

8.19 Donors should be required to lodge separate returns while there remains a threshold below which amounts received by political parties do not have to be aggregated for disclosure purposes. However, the current $1500 reporting threshold for donors is unreasonably low and must discourage many potential donors.

8.20 ***Recommendation 57:***

> **that section 305B(1) of the Electoral Act be amended to increase from $1500 to $10 000 the amount above which a donor to a registered political party must furnish a return for the financial year.**

Annual and Election Returns

8.21 Political parties are required to lodge returns of election expenditure in addition to annual disclosure returns. The Liberal Party submitted that the two returns involve unnecessary duplication and that the election return should be abolished. Similarly, the ALP submitted that the parties should be able to lodge their audited annual accounts in place of both the annual return and the election return.

8.22 While the AEC expressed strong support for audited annual returns, it advised that it would only support the lodging of parties' internal audited accounts if those accounts provided "full and timely disclosure in a simple and easy to understand format".[263] On the election return, the AEC noted that this return was abolished when the more detailed annual return was introduced, but was then reintroduced when the requirement to lodge claims for election funding was removed. The AEC does not object to the election return again being abolished.[264]

8.23 ***Recommendation 58:***

> **that section 309 of the Electoral Act be amended so that registered political parties are not required to lodge returns of electoral expenditure.**

8.24 ***Recommendation 59:***

> **that the Electoral Act be amended to allow 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 Act and b) the format of the accounts being approved by the AEC.**

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262 Submissions ppS1494-5
263 Submissions pS1493
264 Submissions pS1495

Total Expenditure Report

8.25 The political parties' annual returns must record amounts paid in detail, rather than just listing total expenditure. The Liberal Party submitted that

> the present requirement...is burdensome and provides little benefit for the broader purpose of disclosure laws. Third parties should be able to enter into normal business transactions with political parties without having their names published with details of what would in any other circumstances be private or commercial and confidential dealings.
>
> A simple requirement to report total expenditure will minimise the cost of administering the legislation and avoid unwarranted detail - without undermining the original accountability goals of the legislation.[265]

8.26 The ALP made similar comments during the public hearings. Given that the AEC also supports the proposal[266], the Committee recommends accordingly.

8.27 ***Recommendation 60:***

> **that section 314AD of the Electoral Act be amended to replace the current requirement to report in detail amounts paid with a requirement to report total expenditure.**

Tax Deductibility of Donations

8.28 Donations to a registered political party are tax deductible to an annual level of $100. The Liberal Party submitted that the maximum deduction should be increased to $10 000, while the ALP nominated a figure of $1500. The ALP also noted certain inconsistencies in the tax laws:

> Political parties suffer a significant disadvantage because of the way in which the tax laws apply to political donations. If a donation is made to a fighting fund - a fighting fund established by whatever organisation - then the chances are that that donation is tax deductible. If the donation is made to the formal, proper and legitimate political process, it is not tax deductible...
>
> [Also] It is interesting that the word 'contribution' was chosen [in the tax provisions], because the word 'contribution' appears to have a separate definition so far as the tax people are concerned. So a payment of $100 to attend a party dinner is regarded as tax deductible; $100 in terms of our membership is tax deductible; buying $100 worth of raffle tickets is tax deductible. That is a fine way of operating a political party.[267]

8.29 An increase in the maximum deduction would encourage small to medium donations, thereby increasing the number of Australians involved in the democratic process and decreasing the parties' reliance on a smaller number of large donations.

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265 Submissions ppS625-6
266 Submissions pS1495
267 Transcript pEM116

8.30 ***Recommendation 61:***

> **that section 78 of the Commonwealth Income Tax Assessment Act be amended so that donations to a political party of up to $1500 annually, whether from an individual or a corporation, are tax deductible.**

8.31 Also, Ms Clover Moore MLA, Mr Allan Rocher MP, Mr Graeme Campbell MP and Mr Paul Filing MP all noted that donations to independent Members of Parliament are not tax deductible. This inequity should be rectified.

8.32 ***Recommendation 62:***

> **that section 78 of the Income Tax Assessment Act be amended to provide that donations to an independent candidate at a Federal or State election are tax deductible, at the same level as donations to registered parties.**

Penalties

8.33 The Liberal Party and the ALP submitted that given political parties' dependence on volunteer office holders, the penalties for non-disclosure specified in section 315 of the Electoral Act should be amended to recognise "substantial compliance".

8.34 However, section 315 already sets penalties only for "knowingly" making a false or misleading return. The simplified reporting requirements the Committee has recommended should reduce the burdens on party administrators, and eliminate any need for relaxed penalty provisions.

Election Funding

8.35 In February 1984 the Federal Labor government amended the Electoral Act to provide for public funding of election campaigns. This amendment occurred pursuant to a recommendation by the Joint Select Committee on Electoral Reform in its *First Report* of September 1983.

8.36 Public funding of election campaigns is designed to lessen the extent to which political parties are reliant on financial support from trade unions, corporations and wealthy individuals.

8.37 Currently the entitlement to funds is based on a set amount for each vote gained by a group or candidate. The Committee believes the public funding system would be improved by basing the available pool of funds on the total enrolment at the close of rolls for an election. Each party's entitlement would be based on its share of the primary vote taken as a proportion of the total pool of public funds.

8.38 For example, if there are 10 million electors on the roll, and public funding is $1.50 per elector (for both the Senate and the House of Representatives), then the pool of public funds available would be $30 million. A party gaining 25 percent of the primary vote would be entitled to 25 percent of $30 million. Under this approach there would be a fixed amount

available for public funding at each election, with the parties' entitlements determined by their share of the vote.

8.39 Parliament would continue to determine the amount payable per elector, as provided for in section 294 of the Electoral Act.

8.40 ***Recommendation 63:***

> **that the Electoral Act be amended so that the amount of public funding available is based on the total enrolment at the close of rolls for an election, multiplied by the amount payable per elector as in section 294 of the Act.**

Annual Returns by Commonwealth Departments

8.41 Section 311A of the Electoral Act provides that each Commonwealth department must attach to its annual report a statement, which must set out particulars of amounts paid to organisations involved in advertising, market research, polling and direct mailing.

8.42 Section 311A was inserted in the Electoral Act in 1991 without prior consultation and against the wishes of the then government. The AEC has noted that the provision has no relevance to electoral matters, and that the AEC has no role in the provision's administration except as a reporting agency like any other.

8.43 ***Recommendation 64:***

> **that section 311A of the Electoral Act, concerning annual returns by Commonwealth departments, be deleted and inserted in more appropriate legislation.**

Other Disclosure of Donations

8.44 Mr Ian Farrow submitted that the Electoral Act should stipulate that political donations by companies and other organisations (such as registered industrial organisations) are to be reported in those organisations' annual reports.

8.45 Such information is already publicly available in political parties' and donors' annual returns. Further reporting of the type suggested by Mr Farrow is a matter for the organisations' stakeholders to determine.

Associated Entities

8.46 Both major parties drew to the Committee's attention their concern about the unintended consequences of the requirement in the Electoral Act for annual returns by associated entities. While not making a specific recommendation, the Committee believes the government should review the operation of these provisions to take into account the legitimate concerns raised by the parties, consistent with the maintenance of proper disclosure principles.

CHAPTER NINE

OTHER MATTERS

The Australian Electoral Commission

9.1 The AEC was established as an independent statutory authority in February 1984, taking over from the Australian Electoral Office (1973-84) which was formerly the Commonwealth Electoral Branch (1902-73) of a series of government departments. The AEC has a three-tiered structure with a Central Office in Canberra, a Head Office in each State and the Northern Territory, and offices in most of the House of Representatives electoral divisions. The divisional offices have a permanent staff of two to three officers including the Divisional Returning Officer (DRO). As at 30 June 1996 the AEC's staff (not including the casual staff employed for the election) numbered 755, of whom 414 were in the divisional offices, 190 were in the State Head Offices and 151 were in Central Office.

The Divisional Office Structure

9.2 The Electoral Commissioner, Mr Bill Gray AM, informed the inquiry that

> the consensus within the AEC is that, from an administrative and operational viewpoint, the 1996 federal election was the most successful federal election conducted by the commission since its formation in February 1984.[268]

9.3 The professionalism of the AEC and its staff was indeed praised in evidence from MPs, political parties and others.[269] However, the Commissioner cautioned that the administrative success of the election did not mean that

> it was necessarily the best election for individuals in our management area, the most comfortable or the least stressful. In fact, in order for it to be the most successful, people have had to work with very high levels of stress.[270]

9.4 The previous committee reported in 1994 on the increasing budgetary constraints faced by the AEC. The AEC had advised the committee that resources were diminishing to the point where divisional office staffing was to be reduced, from three permanent officers in each division to an average of 2.7 over the AEC's three-year forward cycle. The revised staffing allocation was to precede a more comprehensive structural review.[271]

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268 Transcript pEM4

269 see submissions pS29 (B.Cox), ppS346-7 (ERS Consultancies), ppS393-4 (Senator G.Tambling), ppS417-20 (A.Green), pS632 (R.Johnston MP), pS636 & pS641 (E.Cameron MP); transcript ppEM100-1 (ALP) & pEM128 (Liberal Party)

270 Transcript ppEM25-6

271 *The 1993 Federal Election* p130

9.5 Staff levels in the divisional offices have been eroding for some time, with a number of DROs obliged to conduct the 1996 election with only one other permanent officer in their division (supplemented by casual staff). The stress caused by such arrangements was highlighted in a number of submissions. The most personal evidence was given by the DRO for Fadden, Mr George Johnson, who suffered a breakdown less than a week before polling day and has been on extended leave since the election. In public hearings Mr Johnson made the following analogy:

> I believe the Electoral Commission is like the aviation industry. It comprises the administration, which is the equivalent of central office; senior head office staff are in the control tower; while the remainder make up the ground crew. The divisional staff are the air crew. When you board your aircraft to return to Canberra tonight, the administration, control tower and ground crew will all assure you that everything is okay. How would you feel if, just before take-off, you discovered that the three crew needed to fly the plane had been reduced to two? Worse still, the co-pilot is actually the steward, who has been given some manuals to read before take-off or, even worse, the co-pilot is a temporary employee who has never been on an aircraft.
>
> The pilot stares blankly at you because he is stressed to the gills because he is trying to do everything himself and has been doing excessive overtime. He is exhausted. He has grave reservations about the on-board computer system which has been acknowledged by administration as being in need of major upgrade. Is this a disaster waiting to happen? How confident would you be about arriving safely at your destination? Would you fly with this airline?[272]

9.6 As part of the 1997/98 budget process, the government requested a submission from the AEC canvassing options for "regionalisation" of service delivery.[273] Under a regionalised system there would no longer be an AEC office in every division, at least in metropolitan areas where, at present, a small geographical region will contain several offices. Instead, each area would have fewer but larger offices, each catering for a number of divisions.

9.7 Regionalisation is not a new proposal, having being endorsed in reviews conducted for the Australian Electoral Office in 1974 and the AEC in 1985, and in reports by this Committee's predecessors.[274] Regionalisation has not occurred because of historical opposition from AEC staff and Members of the House of Representatives, and a consequent refusal by the Parliament to make the legislative changes that may be necessary to establish a regionalised structure.[275]

9.8 The closest the AEC has come to rationalising its structure is to establish a number of co-located offices, where two or more divisional offices are grouped under the one roof but

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272 Transcript ppEM279-80

273 Submissions ppS355-7 (P.Downes), ppS380-8 (G.Johnson), pS652, pS672 (A.McGrath), pS1412 (R.Patching), ppS1476-8, pS1710, ppS1730-1 (AEC), ppS1981-4 (G.Johnson), pS2009, pS2011, ppS2023-45 (A.McGrath), pS2090 (R.Patching), pS2151 (A.McGrath) & ppS2347-52 (G.Johnson); transcript ppEM170-1 (A.McGrath), ppEM189-91 (A.Viney), ppEM243-4, pEM253 (R.Patching), ppEM264-6 (G.Smith), ppEM278-89 (G.Johnson), pEM372 (Northwest Members of the WA Parliamentary Labor Party), ppEM424-35 & ppEM493-6 (AEC). See also 1990 and 1993 AEC staff opinion surveys accepted as Exhibit no.14

274 Joint Standing Committee on Electoral Matters, *Is This Where I Pay the Electricity Bill?* (October 1988); *The Conduct of Elections: New Boundaries for Co-operation* (September 1992)

275 Submissions pS1477 (AEC)

with each division retaining a separate staff structure. The AEC's management has made no secret of its desire to make more substantial changes:

> Current funding levels only permit the permanent employment of two people within 65 of the 148 Divisional offices around Australia. Staffing levels of this kind do not create viable administrative units and would not be found in, or accepted by, any other agency within the Australian Public Service (APS). In addition, the organisational structure at the Divisional level has directly contributed to an escalation in staff stress and complaints in relation to Occupational Health and Safety, the lack of career development, the lack of gender equity within the AEC, and a reduction of service to the community. These issues can no longer be set aside if the AEC is to avoid seriously jeopardising the ongoing operation and capacity of the AEC to fulfil its statutory functions...
>
> The AEC is now at a point where it must move to initiate a reconfiguration of all its resources so that it may not only operate within its annual appropriation, which is subject to a continuing efficiency dividend and other reductions, but also to generate savings sufficient to finance the upgrade of its information technology capabilities.[276]

9.9 The AEC submitted that there is now "wide support" within the AEC for organisational change, with "acknowledgment of the benefits which would accrue to employees".[277] However, such sentiments were not reflected in evidence to this inquiry. What instead emerged was cynicism that management has been wilfully downgrading the divisions in order to present regionalisation as the only option. In support of this theory, it was noted that Central Office staffing has substantially increased over the same period in which the divisions have been starved of funds. Figures supplied by the AEC show that from 30 June 1993 to 30 June 1996, staffing in Central Office increased by 42 positions (a 38.5 percent increase) as against a decline in divisional office staffing of 39 positions or 8.6 percent.[278]

9.10 While regionalisation might well deliver certain efficiencies, a properly-resourced divisional structure has for decades provided a valuable service. The Committee wants to see concerns about regionalisation assessed before any such scheme is implemented. Those concerns include:

- a potential loss of local electoral knowledge, with possible effects on the accuracy of the rolls,
- a reduced service to electors, MPs and candidates,
- a diminished capacity to conduct electoral education and other such functions, and
- a reduced number of permanent staff conducting elections.

9.11 Given the importance of such issues, the Committee is surprised that divisional staff were shut out of the preparation of the AEC's budget submission. The view of many staff

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276 Submissions ppS1477-8
277 Submissions pS1478
278 Submissions pS1955 & ppS2388-9; transcript ppEM494-6

was reflected in a letter from one DRO to the Member for his division, which the Member in turn forwarded to the Committee:

> The invitation from the Australian Electoral Commissioner for all staff to provide input prior to submissions being evaluated appears to be window dressing at best. The imposition of impossible timeframes for input of submissions and the selective make up of the various working groups locked most staff out of the very process in which we were invited to participate. Significantly, the divisions are not adequately represented on the working groups which are developing the proposals.
>
> In addition staff have been advised that any resulting documentation, presumably proposals and deliberations, will have the status of a Cabinet Submission and accordingly the confidentiality requirements of such documents precludes any advice to staff, and therefore discussion on their merits.

9.12 However, the proposals put to the government on restructuring of the AEC were not adopted in the Federal budget on 13 May (just as this report was being completed). There were no abnormal reductions to the AEC's budget allocation.

9.13 The Committee deeply regrets that its predecessor's recommendation that the government "refer the AEC's proposals for a revised structure to the Committee for inquiry and report"[279] was not accepted. Such an inquiry would have allowed a far more considered assessment of the AEC's structure than the rushed and secretive process instead adopted, and would have given divisional staff a proper opportunity to present their views.

9.14 ***Recommendation 65:***

> **that when available, any government proposal for reorganisation of the AEC divisional office structure be referred to this Committee for inquiry and report.**

9.15 ***Recommendation 66:***

> **that if regionalisation does not proceed, funding for AEC divisional offices be increased to a level sufficient to maintain a permanent staff of three in each office.**

9.16 In addition to the staffing crisis, Mr George Johnson advised of considerable stress being caused by the AEC's computer systems. He suggested that staff in Central Office are being preferred over the divisions in the supply of industry-standard personal computers, and that there is little compatibility between the various systems now in use within divisional offices. For example, divisional staff are obliged to access five different screens in three different systems to change polling place details.[280]

9.17 The AEC acknowledged a pressing need to upgrade its information technology (IT) systems, and submitted that restructuring would free up the capital to fund such an upgrade. If restructuring is delayed, IT upgrades should still take place as a matter of urgency.

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279 *The 1993 Federal Election* p132

280 Submissions ppS383-5; transcript ppEM284-5

9.18 ***Recommendation 67:***

> **that if regionalisation does not proceed, the government provide special project funding as a matter of urgency to enable replacement of the information technology used in AEC divisional offices.**

9.19 Finally, following consultations with the Committee the Australian National Audit Office (ANAO) has initiated a performance audit of the AEC - the first such audit since 1986. Topics that might be examined in the audit include regionalisation, the respective functions of the three tiers of the AEC, staff morale, computer systems and the maintenance of the rolls. The Committee will examine the audit report when it is available.

Co-location of AEC and Members' Offices

9.20 The ALP's Kooyong Campaign Committee and its National Secretariat wrote to the inquiry to express concern about the AEC office in the division of Kooyong being located in the same building as the office of the sitting Member, the Liberal Party's Petro Georgiou MP.[281]

9.21 A number of AEC offices are located next to, or in the same building as, offices of Members of Parliament of various political persuasions, for reasons including lack of suitable alternative space or Members moving into buildings where the AEC is already a tenant.

9.22 The AEC and the Department of Administrative Services should be aware of the sensitivities involved when considering locations for future AEC offices. The Committee does not see a need to make formal recommendations on this matter.

Election Litigation

9.23 An election result for a House of Representatives division, or a State or Territory for the Senate, may be challenged by way of a petition to the High Court sitting as the Court of Disputed Returns. The period for filing a petition with the Court is 40 days after the return of the writ for the relevant election.

9.24 The following conditions apply to the lodging of a petition[282]:

- the petition must set out the facts relied on, with sufficient detail;
- the petition must contain a prayer for relief;
- the petition must be signed by a candidate or a person qualified to vote at the disputed election, as well as two witnesses; and

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281 Submissions ppS395-404 (ALP Kooyong Campaign Committee), ppS443-4, ppS603-5 (ALP) & pS1482 (AEC); transcript ppEM107-9 (ALP) & ppEM141-2 (Liberal Party)

282 Submissions ppS211-3 & ppS1707-8 (AEC); transcript ppEM24-5 (AEC)

- a deposit of $500 as a security for costs must be paid. This figure was increased from $100 following the 1993 election, and parties are now able to have unrestricted legal representation.

9.25 The AEC is empowered under section 357 of the Electoral Act to challenge the result of an election. Section 376 of the Act further provides that any question about the qualifications of a Member of Parliament may be referred to the Court by way of a resolution of the house of Parliament in which the question arises. A resolution concerning Senator-elect Jeannie Ferris (Chapter Six refers) was passed after the 1996 election.

9.26 The Ferris reference, the Langer cases and the Snowdon and Free petitions to the Court of Disputed Returns are all examined elsewhere in this report. As at April 1997, a further two petitions filed after the 1996 election are still listed but have not progressed further. One of the petitions was filed by Mr Paul Stevenage challenging the election of Mr Paul Filing in the division of Moore in Western Australia, on the grounds of bribery, misleading advertising, interference with political liberty and defamation. The other petition was filed by Mr John Abbotto challenging the Senate election in Victoria on the grounds of discrimination against ungrouped Senate candidates.

Delivery of Ballot Papers by Post or by "Other Means"

9.27 In 1995 the Queensland Supreme Court voided the election for the State district of Mundingburra on various grounds, including the failure of the Electoral Commission Queensland (ECQ) to provide postal votes to soldiers in Rwanda.[283] The ECQ, knowing the postal service in Rwanda to be virtually non-existent, had attempted to use the Australian Defence Force (ADF) as an agent in the delivery of ballot papers. Problems with the ADF service then meant that some of the soldiers were unable to vote.

9.28 The Supreme Court appeared to accept that had the ECQ simply performed its statutory obligation to "post" material to the soldiers, there would have been no grounds for overturning the election on account of official error or omission. Similarly, the Attorney-General's Department has advised the AEC that an unsuccessful attempt to convey Federal election materials by means other than the postal service could lead to a result being overturned.

9.29 The Committee agrees with the view put by the AEC during public hearings:

> The concern is that if [the Mundingburra] situation were to prevail at the federal level there would be great pressure on the administration simply to drop the envelopes in the post box, knowing that they would not possibly reach the soldiers...there should be no practical problem associated in those circumstances where Australia Post can say that the mail service is not working in another country by adopting another mechanism. In fact, that mechanism should be deemed to have been a fulfilment of the requirements of the Act.[284]

283 Submissions ppS190-1 (AEC); transcript ppEM22-3 (AEC)
284 Transcript ppEM22-3

9.30 ***Recommendation 68:***

> **that section 188 of the Electoral Act and section 61 of the Referendum Act be amended to provide that where Australian Defence Force (ADF) personnel are serving in an overseas country as a formed unit, and Australia Post certifies that postal vote applications or ballot papers would not, if posted, reach the personnel in time for their votes to be cast before the relevant deadline, then the requirements of section 188 and section 61 shall be satisfied if a Divisional Returning Officer provides the relevant applications or ballot papers to a designated member of the ADF.**

9.31 ***Recommendation 69:***

> **that similar amendments be made to the Electoral Act and the Referendum Act to cover cases where the AEC uses services other than postal services, such as contractual delivery, for the conveyance of postal voting material.**

9.32 ***Recommendation 70:***

> **that the Electoral Act and the Referendum Act be amended to provide explicitly that a failure of an alternative mechanism to the postal service shall not, in cases where the postal service has broken down, form the basis for a challenge to the result of the election in the Court of Disputed Returns.**

Decisions "as Quickly as is Reasonable"

9.33 After the 1993 election Mr Alasdair Webster lodged a petition disputing the result for the division of Macquarie in NSW. In March 1994 the Court, on an application from Mr Webster, dismissed the petition in its entirety. In June 1996 the Court handed down its decision on costs.

9.34 The AEC informed the inquiry that it is concerned

> about the extensive delays that were allowed to occur in the hearing of the Webster petition, and in the handing down of the costs decision. In all, it took over three years for matters to be finalised. The AEC is of the view that the CEA should be amended to ensure that this does not occur again.[285]

9.35 The slow pace of court procedures in election petitions was a problem recognised by the Queensland Electoral and Administrative Review Commission (EARC) in its December 1991 report which reviewed the operation of Queensland's electoral legislation. The EARC made a number of recommendations to speed up the timetable for hearing election petitions.

9.36 The Queensland *Electoral Act 1992* now provides that the Supreme Court must deal with a petition "as quickly as is reasonable in the circumstances". The AEC has suggested

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285 Submissions pS214

that a similar provision in the Commonwealth Electoral Act might be preferable to the Parliament imposing strict procedural deadlines on the High Court.

9.37 ***Recommendation 71:***

> **that the Electoral Act and the Referendum Act be amended so that the Court of Disputed Returns or the High Court must decide election or referendum petitions "as quickly as is reasonable in the circumstances".**

"Splitting" of Petitions

9.38 An issue during proceedings for the Snowdon petition was the capacity for election petitions to be "split", so that questions of law are considered by the High Court while questions of evidence are considered by a Supreme Court:

> During the course of the preliminary proceedings, it appeared as if evidentiary matters might have to be resolved in the petition, by the examination of declaration envelopes and the calling of witnesses. This could have involved up to 1594 individual investigations. The High Court, sitting as the Court of Disputed Returns, has made it clear...that it is not amenable to dealing with such a load and would, if such evidentiary matters were to be pressed, refer the petition to the relevant State Supreme Court. This option is available to the Court under section 354 of the CEA.[286]

9.39 While questions of evidence could on occasion usefully be remitted to a Supreme Court, the final determination on a Federal election challenge should only be made by the High Court. However, the Electoral Act only empowers the High Court to either try a petition, *or* refer it in its entirety to a Supreme Court.

9.40 ***Recommendation 72:***

> **that section 354 of the Electoral Act be amended to enable the High Court to remit aspects of a petition to a Supreme Court, with the High Court retaining final jurisdiction on relief.**

Four Year Terms

9.41 Mrs Ricky Johnston MP and Mr Graham Smith both submitted that section 28 of the Constitution should be amended, to increase the House of Representatives term from three to four years. Their arguments included better long-term planning by governments, consistency with State jurisdictions and cost savings.[287]

9.42 For all these reasons, the Committee has no difficulty giving its unanimous support to four-year terms for the House of Representatives. Parliamentary terms would appear to be a logical topic for examination in any future discussions on constitutional reform.

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286 Submissions pS1659 (AEC)

287 Submissions pS635 (R.Johnston MP), pS1432 & pS1449 (G.Smith); transcript ppEM261-2 (G.Smith)

By-elections

9.43 Section 33 of the Constitution provides for a by-election when a vacancy arises in the House of Representatives, for example when a Member has resigned. There is no specified time during which the writ for the by-election must be issued.

9.44 Former Electoral Commissioner Colin Hughes submitted that to prevent by-elections being unduly delayed by political considerations, there should be a requirement that the writ be issued within 30 days of the death or resignation of the Member (except during the final few months of the life of the House of Representatives).[288] The AEC endorsed Professor Hughes' proposal.

9.45 While there is merit in the proposal, 75 days (approximately 2.5 months) is a more reasonable time limit than 30 days.

9.46 ***Recommendation 73:***

> **that the Electoral Act be amended so that within 75 days of the resignation or death of a Member of the House of Representatives, a writ must be issued for a by-election (except in the four months before the expiry of the House of Representatives by effluxion of time). A similar amendment should apply to supplementary elections caused by, for example, the death of a candidate after the close of nominations.**

9.47 A Mr CGW Hughes (not the former Commissioner) suggested that Members who resign should be obliged to fund the subsequent by-elections.[289] The Committee does not support this proposal, for reasons put forward by the AEC:

> The proposal that retiring Members of the House of Representatives should meet the costs of a by-election consequent on their resignation, essentially applies a penalty to retirement, and raises issues of equity in relation to the smaller political parties and Independent Members who do not have a political party machinery behind them to support the payment of a penalty of the magnitude of $285 000.
>
> Further, questions of definition must arise, such as whether there is some threshold set of reasons for resignation that should trigger the penalty. For example, resignation for reasons of ill-health or family problems would presumably have to constitute penalty exclusions. Once it is accepted that some exclusions are necessary, the further question arises as to how such cases should be arbitrated...[290]

9.48 Also, the view is often expressed that for cost reasons by-elections should be scrapped altogether. However, a by-election is a more democratic means of filling a vacancy than a party appointment (which would require a referendum on the constitutional requirement that Members be "directly chosen by the people"[291]) or a countback for the relevant division.

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288 Submissions pS96 (C.Hughes), pS1469, ppS2385-6 & ppS2390-3 (AEC)
289 Submissions pS04 (CGW.Hughes) & ppS1460-1 (AEC)
290 Submissions pS1461
291 Submissions pS1461 (AEC)

By-elections serve as a barometer of public sentiment, which can only enhance the effective functioning of government.

Ongoing Inquiries

9.49 The 1996 Federal election is the sixth in succession to be examined by a parliamentary committee on electoral matters. The Committee now intends to report on more specialised topics, having tabled this comprehensive review of the electoral system.

9.50 The Committee is inquiring into industrial elections and later this year will seek a reference on the AEC's conduct of elections for the Aboriginal and Torres Strait Islander Commission (ATSIC). Also, the Committee awaits the government's response to the previous committee's final report.

Redistributions of Electoral Boundaries

9.51 In December 1995 the previous committee presented its final report. The report, titled *Electoral Redistributions*, responded to a reference to "inquire into and report on the effectiveness and appropriateness of the redistribution provisions of Parts III and IV of the *Commonwealth Electoral Act 1918*".

9.52 The committee unanimously endorsed the fundamentals of the redistributions process while recommending that some aspects be finetuned, for example the degree to which "community of interest" factors are taken into account. The committee also recommended a series of adjustments to the public suggestions, comments and objections stages of a redistribution.

9.53 The government will soon table its response to the report. Any consequent changes to the Electoral Act will be presented either separately, or as part of the major amending legislation likely to result from this inquiry.

Industrial Elections

9.54 The AEC is required to conduct elections for trade union and employer organisations registered under the *Workplace Relations Act 1996* (which replaced the Industrial Relations Act). For the most part these elections are conducted by postal ballot and all costs incurred by the AEC are borne by the Commonwealth. Some 700 industrial elections are conducted by the AEC each year at a total cost of approximately $5 million.

9.55 On 3 October 1996 the Minister for Administrative Services asked the Committee to inquire and report on:

> *the role of the Australian Electoral Commission (AEC) in conducting industrial elections under Part IX of the Industrial Relations Act 1988, including but not limited to:*
>
> - *whether there should be some standardisation of the rules governing the conduct of industrial elections;*
> - *mechanisms for the review of the conduct and integrity of industrial elections;*
> - *the cost of conducting industrial elections, including the impact on the resourcing of the AEC; and*
> - *the capacity of the AEC to provide assistance to organisations on a fee-for-service basis.*

9.56 To date the Committee has authorised 34 submissions and taken evidence at public hearings held in Canberra, Melbourne, Brisbane and Sydney. The Committee's report will be tabled later this year.

ATSIC Elections

9.57 The AEC is responsible under the *Aboriginal and Torres Strait Islander Commission Act 1989* for conducting elections for ATSIC Regional Councils, the Torres Strait Regional Authority, Zone Representatives and Regional Council office-holders. All Aboriginal and Torres Strait Islander people on the Commonwealth electoral roll are eligible to vote. Voting is not compulsory. As there is no separate roll of Aboriginal and Torres Strait Islander electors, all votes cast are declaration votes.

9.58 Of the estimated 172 305 eligible electors, 49 550 voted on 12 October 1996 for candidates for the 35 ATSIC Regional Councils. Between nine and 12 positions were filled on each Regional Council, with the Regional Councillors then electing 16 ATSIC Commissioners. The 1996 Regional Council elections followed those held in 1990 and 1993.

9.59 The conduct of these often difficult elections has yet to be assessed by the Parliament. ATSIC is conducting an internal review of the 1996 elections; when that review is available, the Committee will consider seeking a reference on the AEC's conduct of ATSIC elections.

"Regionalisation" and the Performance Audit of the AEC

9.60 At page 110 the Committee has recommended that "when available, any government proposal for reorganisation of the AEC divisional office structure be referred to this Committee for inquiry and report". Alternatively, the Committee could have referred to it the audit report also mentioned.

9.61 Either reference would provide the Committee, and therefore the Parliament, with a useful means of assessing the fitness of the AEC to conduct elections and referenda into the next century. Any such inquiry will probably be completed late in 1998.

Mr Gary Nairn MP
CHAIRMAN

June 1997

MINORITY REPORT

Senator S Conroy, Mr L Ferguson MP and Mr R McClelland MP

The Majority Report has to be viewed in a broader context. That context strengthens the analysis that the Report is substantially dedicated to creation of obstructions to participation in our electoral processes by millions of Australians. It jettisons historical processes that have served Australian democracy. These have been consistently praised by election experts and envied by other nations. In the case of compulsory voting we speak of 1924 legislation swiftly and unanimously adopted by our Parliament because of its good sense.

The broader evidence of the attempt to push people from voting and registration is displayed by Government calls for Senate reform and the unique Government-inspired processes for the Constitutional Convention. The former nakedly seeks to disenfranchise significant numbers of Australians who do not support the major parties. The latter, with its combination of assaults on the secret ballot through postal voting, more obscure and difficult ballot completion tasks, lack of non-English information and the use of voluntary voting, is designed to discredit the majority decision and place inordinate influence in the hands of appointed Government nominees.

The Report's thrust is to make voting voluntary, to present barriers to enrolment and to heighten secrecy relating to corporate political donations. The various impediments to enrolment are the embryo of a later assault on Australia's tradition of compulsory registration. This has operated since 1911. The dangers of voluntary enrolment are so patent that Coalition proponents of voluntary voting deny this facet of their plans. The evidence of intent is here in the Report. It spells reduced levels of enrolment which will lead to exploitation of these statistics of a fall-off and seeming apathy as a pretext for the further step.

The Committee has not been presented with any substantive material indicating the existence of electoral fraud. It has been limited to anecdote and hearsay.

Despite a dearth of evidence that alleged loopholes are being abused, there are, in the Majority Report, serious new moves to complicate enrolment. The outcome will be discouragement of prospective and past re-enrolling voters.

It is noteworthy that proponents of voluntary voting attempt to explain the abysmal voter turnout in the United States, by recourse to low enrolment excuses. Some have argued against respected commentators that the level is not alarming because we should not count the millions of abstainers not enrolled. Ironically, they now publicly pursue the first step down the same road.

The controversial nature of the principal radical change is instanced by strong debate in Government circles. An indication was the ANU Survey of 1996 candidates' views. While displaying the full gamut of predictable conservative stances, and thus being representative it showed 44 percent of Coalition candidates were opposed to voluntary voting. Prominent Coalition members, Tim Fischer and Petro Georgiou have been more forthright in their denunciations of this move. No evidence was taken on this crucial change.

We oppose the following recommendations:

Recommendation 1 - Implementation Plan (p7)

This is a general operational recommendation for a series of specific proposals that would collectively undermine the participation of millions of Australians in our electoral processes.

It is premised upon unsubstantiated and, in many cases, discredited claims of electoral fraud. The AEC has effectively countered the statistical, legal and practical bases of these assertions. Even the Majority Report has detailed that, "*the Inquiry did not reveal improper enrolment or voting sufficient to affect any result at the election.*"

The submissions cited are predominantly partisan and many actually tackled matters peripheral to the dramatic changes that the Committee has now suggested.

The use of wildly exaggerated allegations of fraudulent conduct must further undermine respect for the integrity of our political system. In contrast, it is internationally perceived as one of probity, which stimulates admiration overseas. Australia provides advisers and observers for contentious elections around the globe. There are consistently, visits by politicians and electoral administrators to look and learn from us. Malaysia was the latest of many nations to publicly indicate that it would be adopting best practice from Australia's system.

Recommendation 2 - Witnessing (p7)

No rational reason has been supplied for witness changes. Why are witnesses any more unworthy to witness an enrolment card simply because, whilst manifestly entitled to do so, they are not technically enrolled themselves at that point?

The only plausible argument for this change is that it causes further inconvenience. The other suggestion is a list of prescribed witnesses. Whilst the list is more reasonable than initially suggested it is still possible that people will have to expend quite some effort to find the required person. The difficulties are greater with contemporary citizens' more frequent change of residence and locality, the average per Australian now being sixteen moves of residence in their lifetime.

Barristers, bailiffs, clerks of courts, doctors, dentists, police officers and pharmacists may fulfil the Liberal Party submission for a list of 'notables', but may still leave many Australians without suitable witnesses to truthfully verify their claim.

In the absence of a modicum of evidence that the current situation is characterised by any fraud, this change is a major encumbrance upon citizens. It is not as though there are not firm legal provisions to tackle inappropriate witnessing. Section 342 of the Electoral Act provides a penalty of $1000 for not satisfying oneself in witnessing that the claims are true. There was no evidence that there has been abuse of the provision or extensive prosecutions. The thrust of the claimed reason for the move is to counter fraud. One really has to ask whether with the limited numbers of people now proposed as witnesses, there will be eagerness to attest, given the penalty if it is going to be operative. In many cases, the person certainly would not know the validity of the person's residential situation. It is highly likely that many Australians

would not know a designated person who could genuinely verify their identity and their place and duration of residence.

An indication of the impact of tough registration requirements on voter participation is given in a comparison of turnout amongst various US States with different enrolment regimes in the 1992 Presidential election. The average amongst the twelve, including Ohio, Minnesota and North Dakota, which allow election day registration, registration at drivers' licence bureaux or no registration process at all, was 2.5 percent greater than those that operated registration by mail and 5.2 percent greater than those with even more restrictive registration rules. The difference between the most extreme variants of registration is over 10 percent.

Recommendation 3 - Documentation (p9)

Clearly, there will be documentation difficulties for those institutionalised, the disabled, frail elderly citizens, the homeless, ethnic minorities, the transient and Aboriginal and Torres Strait Islanders. Assurances that special provision will be made for their circumstances are not sufficient guarantee of the protection of their rights. Increasingly, the reduction of welfare provision furthers the marginalisation of many of these people left to fend for themselves and less attached to mainstream society.

Analogies about the ease of enrolment compared with obtaining videos, ignore the very real distinction in what is at issue. Mechanisms to deprive and hinder social groups in use of their democratic, enrolment rights can be driven by majority groupings entrenching their power by engineering procedural changes. These, in turn, determine the concrete, daily circumstances of those pressured from participation.

A telling indicator of the fallibility of various evidentiary documents is shown in the wide disparity of allowable items. As the Report concedes there is no agreement on categorisation.

The AEC's summary at pS1773 (vol. 5 of the submissions) captures the fundamental problem with this idea. It was stated *"any scheme which required the production by electors of documents such as birth certificates or passports could well constitute a very substantial imposition on the voters themselves. A requirement to produce birth certificates could see voters paying out over $100 million. It is likely that such a scheme would be strongly - and validly - criticised as making people pay for the right to vote. While the effect this would have on voters could be ameliorated if the Commonwealth were to bear the cost of issuing such necessary documents as birth certificates, this would represent a considerable charge on the federal budget"*.

Recommendation 4 - Expanded Matching of Enrolment Data (pp11-12)

There was some evidence that difficulties have arisen in regards the innocent enrolments of non-citizens through naivety. This is due to a fairly pervasive misunderstanding about the distinction between Permanent Residence and Citizenship. This is not surprising given the traditional attachment of many rights in this country to the Permanent Resident status. Thus we are supporting Recommendation 5 (p13).

The stress should not be upon eliminating people from the roll only because they quite honestly do not recall on a particular day their citizenship number or the exact date that they

were naturalised. The recommendation allows checking with DIMA to ascertain the validity of citizenship status and only after further doubts, requires personal action to avoid scrubbing from the roll.

However, this same evidence was absent for defence of Recommendation 4. It is put forward despite many AEC reservations due to resource implications, and surfaces despite debate about privacy and a string of dubious uses for roll information. It also emerges at a time when there is widespread disquiet with the lack of protection for privacy with outsourcing to private sector operations, often not obliged to adhere to adequate privacy standards.

The AEC has made pertinent comment (ppS1751-5, vol. 5 of submissions) on this proposal -

"4.4.5 Any accessing by the AEC of the databases of other agencies, particularly on-line access for data matching purposes, would give rise to issues of cost, security, oversight, and liability, which would have to be the subject of appropriate negotiation and settlement.

4.4.14 A key issue in data-matching is the accuracy of the source data. ....Even the Medicare database, which is perceived generally as a relatively accurate address database, holds out-of-date address records of persons who have not required medical services since last changing address.

4.4.16 If the Australia Post mail redirect service were used to provide information to the AEC, it is estimated that the AEC would receive 65 - 70 % of the names and addresses of householders who have moved.

4.4.17 Each State and Territory electricity agency maintains its own separate database, and consequently the accuracy and type of data held varies between the electricity agencies.

4.4.19 Databases held by the various State and Territory (Births Deaths and Marriages) agencies differ in their coverage and accessibility, and their use would be complicated by differing rules on privacy.

4.4.23 Placing too much reliance on data-matching programs may lead to inappropriate outcomes. Data-matching programs must be rigorously audited, and management made aware of such programs' inherent limitations."

Recommendation 6 - Rolls Close (p14)

The Majority proposes to hinder enrolment by restricting the access of new enrolees during the election. This is despite the reality that vast numbers of Australians undertake registration during that period. This is essentially due to the fact that very few people are aware of the process of acquiring cards at post offices, particularly in the case of the large immigrant population whose introduction to enrolment is at Citizenship ceremonies.

Quite clearly the publicity, the discussion of an election campaign, jogs many people to action, recalling that they have moved residence and not altered their enrolment or alternatively, particularly in this case, have reached voting age. The heightened numbers acting during campaigns is not an orchestrated campaign to fill rolls by political activists; it is

the clear outcome of minimal resources for the AEC to ensure that enrolment is contemporary and the lack of information at most times of the year as to how people enrol.

It is not as though the 440,000 Australians who act in this period are unexplained aberrants. In the 1995-6 period, 2,380,701 people made roll alterations, 800,743 being first time voters and 1,437,958 transfers.

It is crucial to note that the genuine nature of this enrolment surge is demonstrated by a comparison of enrolment figures before and after the election. Thus, for the four months after the 1996 election day the average weekly change was 42,400. In contrast, for the four months prior to the campaign, it was 89,000. Most of the fall is explained by heightened campaign activity. The emphatic conclusion is that under the guise of outlandish, unsubstantiated claims about the feasibility of fraud, vast numbers of Australian citizens will be deprived of a vote. Certainly, the starting point of 440,000 people altering their electoral status is a very significant portion of the electorate.

Recommendation 7 - Subdivisional Voting (p16)

The proposal to reintroduce this hurdle will undermine participation without any impact on its purported target, impersonation or multiple voting. Subdivisional voting has not existed for five elections and is being suggested in an era of increased residence change, a higher population, greater demographic movement, the changing face of communities, and other factors that undermine its utility. Millions of Australian voters have not had the experience of this hindrance to their casting of a vote.

There has been no evidence of organised multiple voting during this inquiry. In the absence of pointers towards a subterranean, unrevealed plot some reliance must be placed on the ascertained statistics. Thus for 1996, there were an admitted 962 multiple votes spread through the 148 electorates.

In NSW the greatest number were in the safe Labor seat of Blaxland and in Victoria, the equally secure Gellibrand. Hard-fought Lowe had six instances and Makin, two. The fantasy of gigantic fraud has not been substantiated by exposes in marginal seats. A disproportionate number occurred in Tasmania. Rather than the Daily Telegraph's sensationalistic horror (12 February 1997), that "on a per capita basis this is more than 10 times the figure for NSW", the explanation was the proximity of Tasmanian and Commonwealth elections. The possibility of this confusion is the very reason the Committee has sought to separate ATSIC and General Election voting (p46).

For the 1993 elections, despite the claims of one witness of 14,172 established instances, the actual figures based on AEC figures were 1253 people seemingly voting twice. These included those admitting that they had, letters undelivered upon AEC inquiry, and letters unanswered.

It is worthy of note that in an analysis as of November 6 1996, of the apparent 16,000 multiple voters, the AEC was able to substantially reduce the possibly fraudulent portion. Thus, 49 percent were established as polling official error, and 35.5 percent were proven to have voted only once upon checking. The summary position is that the number of established multiple voters has increased from a mere 0.0027 percent of votes cast in 1987 to a meagre

0.0085 percent last year, with a good part of the rise accounted for by the said Tasmania aberration, where it rose from 13 to 278.

As early as 1961, 67.8 percent of electors were in subdivisions of more that 5,000 and 29.6 percent in subdivisions of more than 10,000. In 1983 already 85 percent of electors were enrolled in subdivisions with voting populations of over 5,000 and 43 percent were in subdivisions in excess of 10,000. As the AEC's Mr Maley noted in evidence, "*it becomes clear ...that they (the proponents) have a concept of what would be subdivisional voting which is very different from that which applied before 1980."* (pEM35, 15 August 1996 transcript).

Similarly, the Electoral Commissioner Mr Gray commented in evidence on 15 August, 1996, "*We have a highly mobile population. 'Subdivision' means that you would be effectively amending your enrolment more often than would otherwise be the case. There is no question about that and that of course provides an administrative load to this organisation of a kind that I am not sure that we would quickly welcome. We find it a sufficient challenge to keep up with the changes as they are."* (pEM34).

It was further commented by Mr Maley, "*if 35 percent vote at different polling places from time to time, that is the proportion of the electorate you could expect to be significantly inconvenienced."* (pEM418, 25 October 1996).

The upswing of this misguided initiative will be a blow-out in declaration voting, long queues and waiting times, frustration and withdrawal from participation. In 1983 with the then smaller voting electorate, there were 218,886 absentee votes within electorates. We will have the dual situation of the subdivisions being too large to effectively combat fraud and simultaneously suggesting to people that they go outside, get into their car and drive a few kilometres to vote. Many will not be impressed.

The AEC evidence (pS1790, vol. 5 of submissions), provides an apt summary. "*Voting in the same name ... as has been pointed out in numerous AEC submissions to the JSCEM ... is already known to be an infrequent occurrence, rarely undertaken with fraudulent intent, and detectable promptly after an election using current scanning technology."*

A very plausible result will be that with two million Australians moving each year and their established inertia in changing enrolment, many will have their vote taken from them by discovering too late that they reside in another subdivision of the same electorate, are illegally enrolled because they have moved across the street and cannot legally cast a vote.

Recommendation 12 - Voluntary Voting (pp26-27)

There has been no public upsurge calling for a change to Australia's compulsory voting system. In fact, broad popular support persists for a feature of the nation's system that passed totally through all stages of both Houses without amendment or division in a little over two hours, in 1924.

It is promoted without any Committee evidence and minimal discussion. This is despite the fact that it is a fundamental reversal of Australia's long standing democratic practices.

The point should be made unambiguously that Australia does not have compulsory voting. The reality is that people are required to attend a polling booth. As has been argued by those who assert that informal voting is a form of protest, people have this option.

The unambiguous rationale for this change is partisan self interest. This is based on a view that the socio-economic characteristics of non-voters on overseas experience indicate that their discouragement will have important electoral implications here. The proponents are hopeful that a Newspoll figure (23-25 February, 1996) of 19 percent of the ALP and 14 percent of the Coalition being "not at all likely to vote", is accurate. They also hope for an actual repetition of the pre-compulsory voting turnout pattern. There was an average upsurge in turnout ranging between 13.3 percent in Queensland to 33.7 percent in Victoria, for a national average of 26.8 percent, when compulsion was introduced.

Many hope Australia's turnout will deteriorate to those levels. They are comforted by statistical work in Austria and the Netherlands where there were changes between compulsory and voluntary voting. Whilst many other factors operated in the Netherlands, turnout deteriorated by 15.8 percent before rising, but not to previous levels. In Carinthia, an Austrian province, reversion to compulsory voting led to a 2.4 percent rise, whilst non mandatory regions concurrently fell by 2.6 percent.

We turn to a number of arguments, the first being informality, as an indicator of major objection to voting. The evidence has not been very supportive of the reformers' argument. In the past four elections it has ranged between 3 and 4.9 percent with a significant portion accounted for by error and difficulty rather than deliberate voiding. This occurred despite the continuous growth in candidates from 4.14 per seat in 1983 to 6.14 in 1996, which would have increased natural informality.

Even when factors such as the relative complexity of the voting system, candidate numbers, literacy and ability in English are taken into consideration there is not a distinct correlation between compulsion and noteworthy changes to informality. It has also been posited that there is a partial explanation even of the minimal changes in informal voting as instanced in the Netherlands. The reality is that better educated constituents, particularly those who have studied at a tertiary level, are a greater proportion of those still participating in any voluntary system. This has been consistently found in British and American work on these matters.

Similarly, the Australian turnout figures ranging between 92.14 and 96.80 percent are not spectacular catalysts for change. When one considers the overwhelming numbers who vote, the publicity for a half dozen people who choose to be jailed, is not a very persuasive argument.

Many not voting genuinely cannot, for work, family, health or religious reasons, despite the increased liberalisation of pre poll and postal voting. Once more they cannot all be lumped as conscientious objectors.

Compulsory voting allows the entire electorate to feel that they have a degree of ownership in government and its decisions. People feel they are part of the loop and matter. It avoids the marginalisation, hostility and sense of remoteness found in the US. It simultaneously ensures that parties aspiring to govern must ensure that their policies appeal to an extremely broad spectrum.

The alternative leads to the consistent remarks by commentators that this US President or that congressional representative only represents 20 to 25 percent of the electorate.

A recent instance of the discredit that resulting low participation causes was indicated by former Prime Minister, Malcolm Fraser's analysis of the February Pakistani elections. He noted the low turnout and specifically cited the new regime's major credibility question despite an overwhelming majority as a 'serious message' because of that abstention or disinterest. The actual numbers casting a vote seemingly represented only 27 percent of eligible voters.

The 1996 US Presidential Elections participation represented a dramatic reinforcement of the long term self destruction of democratic processes and people's faith in the utility of being in the political process. Even in 1992 when Perot's novelty and anti-establishment rhetoric reversed the decided trend downwards only 55.2 percent of the voting age population bothered. In 1996 it was 50.1 percent, the worst turnout since 1924. Actually for the first time since 1944 the total voters fell. With only half voting, 'successful' candidate Bill Clinton had only 24.5 percent of the eligible electorate in his corner.

This outcome gives nowhere near the legitimacy of an Australian election. Here, there is even some controversy if the winning party does not technically, because of more solid majorities in its opponents' seats, gain an actual majority of the electorate.

The October 1996 Japanese Diet elections displayed a similar disheartening result for the proponents of voluntary voting. The turnout was a meagre 57.7 percent of the entitled electorate. The hoopla they display about New Zealand's turnout understates the institutional role of the new voting system which made the political contest extremely competitive, allowed marginal voices a say and made most voters, particularly Maoris feel they counted. It also discounted a widely acknowledged degree of social compulsion in New Zealand, despite formal voluntarism. There is a wealth of material on this.

Another factor condemning voluntary voting is its facilitation of electoral fraud. Ironically, on other fronts in this Inquiry, fraud has been used to justify moves to effectively disenfranchise people. Here, however, we have a very real threat to the system's integrity. With almost everyone voting there is minimal opportunity for impersonation because of the likelihood that people will indeed cast a vote and a pattern of multiple voting would be more easily exposed. People will readily testify that they only cast a single vote if someone also votes in their name.

With a voluntary voting system and resultant non-attendance by many, the reality is that voting in place of others is encouraged. It is far easier for those dedicated to subverting the system. They will have a wide range of somewhat predictable people not inclined to vote. Any political organisation worth its salt would have a network capable of discovering many of these people. With an attendance of 70 percent, it is possibly even worth taking pot luck on the odds that large numbers will not vote.

The blow out in campaign costs is also an obvious outcome of voluntary voting. There are admittedly many factors leading to the burgeoning expenses of US election campaigning - the availability of the technology, a modicum of party discipline, frequent elections and primaries, the authority of congressional committees, and resultant lobbying endeavours. However, a central cause is the voluntary registration and voting system. Already in 1992,

the total cost of electing the President was about $550 million. That sum included $220 million spent by or on behalf of the two major political party candidates. John Kennedy's campaign spent about $9.7 million to defeat Richard Nixon, whose campaign cost about $10.1 million. (Herbert A Alexander, "United States Election 96" by US Information Agency).

The latest estimate is $750 million for the 1996 Presidential contest. The controversy around the influence of corporate and interest group donations reached a crescendo in these elections. "The Economist" of February 8, 1997 asserted that spending was $660 million on House and Senate seats and $3 billion in total. It cited a study by Herbert Alexander of the University of Southern California, saying that 25 percent of a congressman's votes were directly influenced by donors' attitudes. We thus have a very basic challenge to democratic controls with the desperate, constant search for money and the ultimate influence it sways. Amongst donors, a worrying development was the influence peddling efforts of Indonesia's Lippo group purportedly to affect America's Timor Policy, and firm indications that the Chinese Government tried to buy influence through Democratic contributions. Not to be outdone the Republicans pocketed $1.9 million from Phillip Morris. The voluntary system is a major player in this cavalcade of fundraising, donations and influence.

Traditionally there had been spurts of frenetic activity to enrol new voters and persuade low turnout groups such as Blacks and Hispanics to vote. These are, however, today a minor after-thought of most campaigns and much has been written about the drying up of money to Foundations undertaking enrolment drives. In more recent times the sophistication of the technology and resources of the campaigns have allowed much of the advancing ocean of money to be utilised on targeting those most prone to vote. Thus these social groups not only become persuasive on the policy agenda front, but essentially their conversion or continued activity call the tune in campaigning.

".... modern campaigns have turned their increasingly sophisticated technology and financial resources away from registering voters, generally to targeting likely supporters specifically, thus exacerbating the disaffection of the non-voter." (Cindy Rosenthal "Where is Everybody - (Not at the Polls)," - Vol 16 (10) Nov/Dec 1990 p. 27).

*"Their financial resources are vested instead in the weaponry of modern political campaigns: consultants and television advertisements rather than precinct captains and storefront headquarters. 'Both parties have succumbed to reaching (people), not touching people,' said Southwest Voter Project's Hernandez." (*James A Barnes, "From here to the White House," National Journal 15 August, 1992 p. 1897).

In another article Marshall Ganz, ("How Technology and the Market Are Destroying Politics," American Prospect, Winter 1994), convincingly argued:

"Today's campaign strategies have reached a new level of sophistication, where only those voters most likely to vote are wooed, messages change with demographics, issues are condensed in fleeting televised images, and campaign organisations are nearly as ephemeral," p104.

This concentration upon the need of socio-economic groups more inclined to play a political role has essentially dictated a relative sameness from the parties on matters such as crime, taxation and welfare.

There has been a multiplicity of articles concerning turnout and its socio-economic nature. Thus, Kenneth Dolbeare calculates, *" in 1988, turnout amongst the richest fifth of the population was 67 percent diminishing down the socio-economic scale to a turnout of 30 percent among the poorest fifth.."* (PJ Davies and F Waldstein (eds), "Political Issues in America in the 1990's").

In a valuable statistical work on these matters Jan E Leighley and Jonathan Nagler could aptly determine that today's almost universal income distribution and employment trends could spell an even greater approaching challenge to democratic participation. In referring to many other articles on the demographics of turnout they note:

"Two variables are estimated as having statistically significant efforts on class representation. Per capita personal income is positively related, while ethnic heterogeneity is negatively related to class representation. Thus, states with lower ethnic diversity and those with high average income have electorates which are more representative." p 146.

".....the only increase in turnout between 1964 and 1988 occurs in the highest income group from (14.7 percent to 16.8 percent)."

"..... the percentage of high school graduates in the bottom income group rose 29.2 percent from 1964 to 1988, compared to only 16.5 percent for the top income group. Similarly, the percentage of high school graduates among blue-collar workers and white-collar workers increased by 35.4 percent and 14.3 percent, respectively."

They quote Burnham's (1987) figures on a middle class turnout in presidential elections in Boston which show that *"the turnout rate of men classified as manual labor (blue collar) dropped from 66.1 percent in 1964 to 48 percent in 1980. The rate of white collar men dropped from 83.2 percent to 73.0 percent."*

"Reiter (1979)..... compares income quartiles for white NES respondents from 1960 through 1976. ..... the gap between the voting rate of the top and bottom income quartiles has gone from 18.2 percent in 1960 to 28.7 percent in 1976."

"Bennett (1991) measures class bias in voting by education level and draws the same conclusion as Reiter for whites under the age of 35: class bias has increased. He reports that from 1964 to 1988 turnout among college graduates in this group went from 71 percent to 59 percent, while among whites without any college years, turnout dropped from 63 percent to 31 percent."

Kim Quaile Hill and Jan E Leighley, ("Mobilising Institutions and Class Representation in US State Electorates," Political Research Quarterly, Vol 47 (1), March, 1994), have written on another facet of this matter. They showed that even the presidential elections' poor performance on representing the whole electorate was relatively healthy compared to the deplorable levels of interest at state levels. They voiced a view that:

"Presidential elections demonstrate the association between overall turnout and class representation noted originally by Key (1949); higher turnout enhances relative class representation."

"Thus the level of aggregate turnout in presidential elections is a fair, if rough, indicator of class representation in presidential electorates."

"The association between turnout and class representation in off-year elections is much lower: the correlations between turnout and representation in 1978, 1982, and 1986 range from 0.39 to 0.46...."

"The salience of presidential elections evidently resulted in a significantly higher mobilisation of lower class voters."

"The significantly reduced correlations between overall turnout and class representation in off-year elections suggest that class representation in these electorates is influenced by factors other than the overall level of turnout."

We have a circle of declining belief in the utility of voting and participation by the poorer people in the electorate, increased targeting of those inclined to vote, more resources needed to persuade them to vote, and greater inclination to direct policies to them and further disillusion and marginalisation of millions.

The US pattern is also typified by low minority voting levels. However, the fact that this is not an American idiosyncrasy is instanced by Australian figures and New Zealand work by Jack Vowles, ("Dealignment and Demobilisation": Australian Journal of Political Science, (1994), Vol 29), where he shows that "*the Maori tendency not to vote has increased and in 1990 Maori remained 8 percent less likely to vote than non Polynesian New Zealanders."* The overall New Zealand pattern was that, *"a person in 1990 was 5 percent, more likely to abstain than a person in 1963."* If speeches can cite the last New Zealand elections as a comforting indication of voluntary voting, it is extremely likely to be a blimp in a trend of less party membership, less voters, less enrolees and a 1990 situation where *"only 13 percent of a sample of 600 were at the high end of a seven point scale of belief in having some say in the system, with 39 percent at the bottom."*

A particularly interesting, first hand account of the impact of changing to voluntary voting was the Netherlands. Galen Irwin ("Comparative Political Studies," October 1974 p292-315), looked at the drop-off of various groups after the nation's 1970 change. It showed that whereas 34.2 percent of those 21-24 stopped voting, for the over 65 year olds it was only 15.5 percent. For those with elementary education it was 21.5 percent, for those with tertiary accomplishments 14.5 percent. Rural voters fell by 17.3 percent and those in the cities 21.9 percent. Males voters diminished by 18.6 percent, females by 24.4 percent.

In summary, voluntary voting will severely affect participation in the long term. Those who will drop out of the process are obvious from all overseas studies. They are the young, those lacking tertiary education, the part of the population that moves home more often, racial minorities, and low income earners. Clearly some find this desirable from an analysis that their voting intentions would predominantly favour the Opposition.

Coalition rhetoric in the past eighteen months would have us believe that the 1996 elections spelled a sea change in these loyalties. Without conceding this it is fair to say that there is more fluidity in political allegiance than two decades ago and voting on the basis of assessed 'class' has become more complex. Nevertheless, regardless of the partisan advantage, the move is dangerous on many fronts.

It means that vast masses of people will drift into apathy. As the system becomes more unrepresentative and the parties concentrate energies on the strata more likely to vote, the sense of marginalisation, estrangement and discontent will heighten. The cost of the contests will increase. This is due to the parallel needs to (a) encourage the apathetic into participation despite policies that are against their interest; and (b) placate those who vote and are largely those in groups that provide the fundraising muscle. The need for funds further corrupts the political process. Simultaneously, while the parties are directed to sameness on a variety of issues that please the comfortable sections that essentially call the tune, they are subject to the countervailing influence of vocal, active minorities.

This is due to the further withdrawal of party members as they become unattracted to the new ideological bent and/or unnecessary in the technology driven campaigning. These minorities can marshal turnout to a reasonable degree due to their constituency's pre-occupations. We thus have the onset of a narrow consensus on welfare, taxation, crime etc and a concurrent polarisation around social issues where interest groups with perceived turnout clout have increased influence and disproportionately influence internal debates.

Those who feel participation lacks value, believe Government is more distant and that they have no influence, have two options. They either totally drop out or unfortunately pursue more extreme political alternatives.

Recommendation 19 - ATSIEIS Restoration (p44)

There is no need for avoidance and delay regarding the necessity to restore the Aboriginal and Torres Strait Islander Electoral Information Service.

The deprivation of indigenous people is apparent and their social marginalisation, with problems of language, remoteness, mobility and educational accomplishment, indicate the need for pro-active assistance for their political participation.

The Government's deliberate action to selectively strip the AEC of this resource alone, by its withdrawal of the $2 million funding, was reprehensible. The programme was introduced by the Fraser Government in 1979. The claimed need to emphasise health, housing and employment was a distasteful charade, given the minimal amount involved in this worthwhile programme.

Field workers had undertaken a commendable effort to educate citizens about all levels of Government, and ATSIC.

The Electoral Commissioner, Mr Bill Gray, very accurately summarised the important work of the ATSIEIS, when he commented of its demise on August 21, 1996, *"the program was considered an important part of the Commission's public awareness work, aimed at the indigenous peoples of Australia, who were seen to require special assistance to facilitate their participation in the processes of elections and of representative government."*

If one examines the five electorates with the highest ATSI population and note their turnout levels, we have an indication of the urgent need for revival. The Australian national turnout level was 95.8, those for the said five electorates were Northern Territory (89.1 percent), Kalgoorlie (88.8 percent), Leichhardt (92.3 percent), Kennedy (93.7 percent) and Gwydir (96.7 percent).

Focussing on enrolment levels, the Kalgoorlie level is 77.0 percent, Northern Territory 80.7 percent and Australia as a whole is 102.1 percent (this percentage includes 17 year-old prospective voters who are "provisionally" enrolled).

ATSIEIS was established to counter these problems. Its objectives included an electoral and information program, including a resource network of local ATSI people, promotion of awareness of and participation in the electoral process and to enrol ATSI electors.

The 16.5 field officer positions were performing an invaluable role on these fronts. On the local and ATSIC fronts, these officers have played important direct roles. There were videos, workshops, sessions in schools, use of print media, radio and television.

There is a strong need for the restoration of this service.

Recommendation 24 - Prisoner Voting (p48)

Currently persons serving prison sentences of five years or longer have no enrolment or voting entitlement. This is a reasonable balance between conflicting concepts.

It is argued that people who have acted against established requirements of civil society should be denied participation in a very fundamental right of free citizens. Alternatively, many people believe that maintaining links with the broader society and being interested in public affairs, feeling themselves not permanently ostracised and isolated, are key factors for rehabilitation. The Majority seeks to abandon this middle way and deny all prisoners regardless of their offence or sentence, voting rights.

The new provisions would be even harsher than those provided in 1902 and are more extreme than the Coalition's Minority Report of the inquiry into the 1993 federal election. It is interesting to note that it is the unanimous view of the Committee that we should rectify the so-called *Langer* provisions. Regardless of one's views as to the propriety of his campaign, the reality is that this political activist would have been denied voting rights under the Majority's provisions. Similarly, a small minority of people eventually go to jail as the ultimate outcome of their protest against compulsory attendance at the polling station. Once more the Committee Majority bemoans the fact that this should be an offence and yet would deny such people voting rights, if they chose to participate.

Similar points can be made about people imprisoned for their struggles against censorship, for right of assembly, in defence of the environment and heritage preservation, against conscription for overseas military service, for or against euthanasia or abortion or for other distinct political campaigns.

It is interesting to note the last publicly-available prisons population statistics, those of 1994. We discover that the following categories of offenders would have been caught-up by the withdrawal of voting rights: driving offences (574); licences, registrations (237); property damage/environmental offences (187). In a total of 14,998 prisoners, 4039 were serving sentences for less than a year. It is also noteworthy that there are scant indications of mass enrolment campaigns by criminal conspirators to destroy the pillars of democracy. In 1996 only 730 people used prisoner mobile facilities. Many criminologists have delineated the racial and socio-economic ingredient of incarceration in this country. Obviously, disproportionately Aboriginals who in no manner should be deemed 'criminals' will suffer the

further deprivation of this move. The Deaths in Custody work was typical of the problem. NSW has recently experienced widespread media coverage of an alarmingly repressive use of verbal abuse offences to incarcerate people in high Aboriginal population areas. It is interesting to read that 26 percent of those who voted by the mobile prison process were in the Northern Territory.

Mr Graeme Orr of the International Commission of Jurists put the issue succinctly in his address, "***Ballotless and Behind Bars***" on July 7, 1996 (accepted as Exhibit no. 13 to the inquiry):

"In what sense is the denial of a fundamental, birthright marker of citizenship such as voting, proportionate to any crime short of treason or sedition, which involves a rejection of the legitimacy of the current political system? In what sense would ordinary citizens see any symbolic link between disenfranchisement and the harm caused by most criminal acts? To ask these questions is to answer them. Whatever merits retributive theory has in justifying punishment in general, it has little to say for the denial of civil rights to the average offender. Whilst disenfranchisement may not lead to festering grievances, it can only be seen as a petty form of degradation, unjustified on either electoral or penal principles."

Another aspect is derived from the Criminal Law Division of the Attorney-General's Department relating specifically to what Majority Report signatories regard as "an inappropriately harsh sanction for failure to vote." That included August 27, 1996 correspondence from the Commonwealth Director of Public Prosecutions (accepted as Exhibit no. 15 to the inquiry). There it was noted, "*As indicated above, in some jurisdictions the alternative of performing community service in lieu of payment of the fine is only available in cases of special hardship. Further, while I have not examined the relevant legislation in all jurisdictions, it is possible that in some jurisdictions the alternative of enforcement by warrant of execution on goods or land may not be available. In that regard, section 82 of the Justices Act 1902 abolished recovery of a fine imposed on an individual by levy and distress. In any event, there could be a reluctance on the part of the courts or relevant officials to enforce payment of a fine by way of warrant of execution on goods or land if such means of enforcement would not be utilised in comparable circumstances arising under State law".*

This is a very real indication that platitudes about people having other options are not as evident as claimants assert. There is additionally the daily reality that some people simply cannot because of family circumstances or low income adopt courses other than incarceration.

Recommendation 45 - Multiple Nominations (p78)

We are of the view that this matter is already sufficiently covered by the operation of the Act.

Recommendation 55 - Reporting Threshold (p101)

A fundamental prerequisite in a democratic political process is transparency of donations. Disclosure is even more vital in an era of greater outsourcing and privatisation, to ensure greater oversight of decision making.

Whilst for pragmatic and management reasons a cumulative threshold of $1500 is reasonable, there are no such arguments for increasing the threshold to $5000.

This is a thinly veiled attempt to allow significant non reportage. For some, $5000 is an insignificant sum; this is not the case in the eyes of most Australians.

Recommendation 57 - Individual Donations (p102)

The recommendation removes the obligation on many donors to report their donation to the AEC.

The Act works by disclosing both donations to parties by the party and the donor - the effect is a "*scissor*" action ensuring an effective Act. Removal of the reporting provisions would allow a potential loophole to open.

Recommendation 63 - Alteration of Electoral Funding Formula (p105)

This is a cynical recommendation since it allows for voluntary voting by tax payers but compulsory payment of taxpayer funds to political parties. The Majority seek to maintain the level of taxpayer assistance, and increase corporate donations through concealment, whilst providing Governments that have less endorsement from the electorate.

This suggestion is essentially a telling admission of a predictable decline in voter turnout and a simultaneous blow out in campaign costs. People are supposedly utterly opposed to participation while others may be temporarily disillusioned. A portion will be totally immune to efforts at enticement towards participation. Yet the Majority Report would attempt to procure enhanced funding, some from people who will be unaffected and opposed to the concept.

The driving force for this alteration and for efforts towards secretive funding is the emergence of a major increase in campaign finance needs. While the US costs have other ingredients such as the frequency of elections, minimal ideological differences between the parties, resultant stress or personalised campaigns and the need for lobbying due to the difficulty of building congressional majorities in a fluid congress of moderate party loyalty, the core cause is the need to persuade people to register and vote. Ironically on the US pattern, the Majority Report would eventually lead to a broad taxpayer subsidisation of campaign targeting dramatically designed to effect a reasonably predicable socio-economic strata in the way they will vote.

The trend has been to increasingly downplay efforts to register new voters. James A Barnes ("From Here to the White House - 1992", National Journal 15 August, 1992), made interesting points about this phenomenon and provided a stark contrast in the local precinct and national campaign spending relativities now as compared to the 1950's.

"The lead story in the July 14 issue of 'The Chronicle of Philanthropy' reports that many foundations that once helped finance drives to increase voter participation are now steering their resources to projects examining some of the broader questions affecting attitudes towards voting, such as the role of money in politics." p. 1895

"The Costs of Democracy (University of North Carolina Press 1960), back up Stein's point. In the 1952 and 1956 presidential elections, Heard estimated, outlays for radio and television by two national party committees amounted to about $2.4 million, a sum that was dwarfed by the $18 million spent by state and local party committees for Election Day activities at the precinct level." (James A Barnes, "From Here to the White House - 1992", National Journal Vol 23 (33), 15 August, 1992, p. 1889).

The change has been dramatic as political parties have given up on the abstainers seeing more opportunity to influence the probable voters.

Recommendation 64 - Departmental Advertising Reports (p105)

This was incorporated into the Electoral Act by the efforts of Coalition MPs in the early 1990s. Now in office, they support its removal.

The Majority notes that this section was engineered by the previous Opposition and asserts that it has "*no relevance to electoral matters*."

There is certainly a need for transparency regarding the use of taxpayer funded Departmental advertising budgets. Disquiet has been expressed about manipulation for campaign purposes of surveys, advertising promotion and 'issues' research.

Given these factors the most rational site for this requirement is in the Electoral Act, where it adjoins coverage of fundraising, donations and stipulations on campaign material.

Senator Stephen Conroy DEPUTY CHAIR Mr Laurie Ferguson MP Mr Robert McClelland MP

June 1997

MINORITY REPORT

Senator Andrew Murray (Australian Democrats)

1. Prologue

This Minority Report focuses on three main areas of concern to the Australian Democrats, resulting from the recommendations of the Majority Committee Report. These are those concerning the recommendation to abolish Compulsory Voting; the recommendations concerning Truth in Political Advertising; and the recommendations concerning Funding and Expenditure Disclosure by political parties.

The Joint Standing Committee on Electoral Matters' Majority Committee Report regrettably is insufficiently responsive to the deep levels of cynicism and disillusionment within the electorate towards their elected representatives. Well publicised scandals and rorts have helped feed public dismay, but they are not the only cause of voter dissatisfaction. It seems evident that the deterioration in attitudes by the electorate towards politics and politicians has accelerated during the tenure of the Howard government. I contend that as yet, and unfortunately, there has been no actual or perceived advance in parliamentary or political standards. This Majority Report misses an opportunity to significantly advance standards where relevant, through the Commonwealth *Electoral Act*, and related legislation.

Surveys and polls have reinforced the view that the electorate perceives parliamentarians to be self interested, dishonest, and lacking in accountability and openness. The recommendations on Compulsory Voting, on Truth in Political Advertising, on Disclosure, and on other matters in the Majority Report reflect more a partisan political attitude than one responsive to public outrage at current political behaviour and standards.

2. Chapter One - Introduction (p1)

The 1996 Federal Election

The Majority Report fails to point out a real weakness arising from the Federal election in 1996, a weakness which is apparent at every election. That weakness represents a strength for the Liberal and Labor parties, because they benefit from it through over representation in the House of Representatives (HoR). The weakness is that democratically speaking, large numbers of voters who give their primary vote to minor parties are not directly represented in the HoR.

In a strict sense the Coalition is a minority government, having achieved 47% of the vote in the HoR. There is nothing unusual about that. In 20 HoR elections over the half century since 1949, only once has any political party (the ALP) exceeded 50% of the vote. The

Liberals have never done so in their own right, but have exceeded 50% three times as a Coalition, in nearly fifty years.

The two major parties, Labor and the Liberals, held 77.8% of the vote in the HoR in the 1996 election. Nearly a quarter of the voters did not give their primary vote to these two parties. Australia is a multi party democracy, with three parties and independents in the HoR, and six parties and one independent in the Senate, after the 1996 election.

In 1996 the Coalition's 47% of the vote delivered 64% of the seats in the HoR, a hugely distorted result. In Figure One below is an indication of how different the election result in the HoR would have been under proportional representation. Labor and the Liberals would have had an equal number of seats, and the minor parties/independents would have had 32 seats, not 23. The minor National Party achieved 18 seats, but on a PR basis would have achieved 12. The minor Australian Democrats achieved no seats, but on a PR basis would have achieved 10. As one letter writer put it:

> Is it fair that one can be generally supported across the nation and get no seats while another party with a few pockets of concentrated support can obtain representation far beyond their vote?[1]

Proponents of the mandate 'get out of my way' theory of government should be mindful that despite getting so many seats, 53% of voters did not vote for the Coalition in the HoR. In these terms the semi proportional representation nature of the Senate provides a useful and desirable democratic counter to the distorted nature of the governing minority's HoR representation. With respect to Senate proportional representation I use the word 'semi' advisedly, because the representation is not proportionate. The Coalition got 44% of the vote in the Senate, and 50% of the seats, 4 more than parity would dictate.

In the 19 Senate elections over the half century since 1949, the ALP have exceeded 50% of the vote once, and the Coalition twice.

It is germane to these remarks to note that the Committee (see 3.49) endorsed the existing Senate and HoR electoral systems. It felt that:

> there is no evidence to suggest that any of the proposed systems would prove superior to stable majority government in the House of Representatives, coupled with a Senate elected on a proportional basis and with each State having equal representation.

There is much historical evidence for strong public support for proportional representation in the Senate. There is also considerable support for proportional representation in the HoR. Australians are not alone in their dislike for the existing electoral system. The Economist/MORI new government poll[2] stated that 65% of British people supported proportional representation, 27% strongly, and 38% 'tend to support'.

The continual propaganda assault of the Howard government and members of the Liberal Party on so many institutions, especially the Senate, encourages the snarlings of those who

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1 Brad Skidmore South Hobart The Mercury June 2 1997.

2 Economist Page 52 # May 1997.

wish to make our parliamentary democracy much less democratic, much less accountable and progressive, and much more the servant of a conservative elite. Such noise should not drown out the legitimate need for Constitutional review. However the Australian Democrats believe that any material change to our Parliamentary institutions, and any change to our Constitution, should be thoroughly tested by a truly representative body, before being put to the people at a Referendum. The proposed Republican Convention should be but the first step in a full process of review.

Figure One - 1996 Comparison - Actual vs Proportional Representation

1996 SEATS				
	HoR		SENATE	
Party	**Actual**	**PR**	**Actual**	**PR**
ALP	49	58	29	28
LP	76	58	32	28
NP	18	12	5	5
DEM	0	10	7	8
Greens	0	4	2	2
Others	5	6	1	5
TOTAL	148	148	76	76

Figure Two - 50 Years of HoR and Senate Elections

a.

% HoR								
Party	**Elections Stood**	**Years**	**Highest**	**Year**	**Lowest**	**Year**	**Average**	
ALP	20	1949-96	50.10	1956	38.80	1996	45.20	
LP	20	1949-96	41.80	1975	32.00	1972	37.00	Coalition vote
NP	20	1949-96	11.50	1987	7.20	1993	9.40	= 46.4
DLP	13	1955-84	9.40	1958	0.20	1983	4.20	Major party vote
DEM	8	1977-96	11.30	1990	3.80	1993	6.80	= 82.2
Greens	3	1990-96	2.90	1996	1.40	1990	2.10	
Others	20	1949-96	5.20	1993	1.00	1963	2.70	

b.

HoR SEATS WON							
Party	**Elections Stood**	**Years**	**Highest**	**Year**	**Lowest**	**Year**	**Average**
ALP	20	1949-96	86	1987	36	1975	59
LP	20	1949-96	76	1996	33	1983	52
NP	20	1949-96	23	1975	14	1990	19
DLP	13	1955-84	0		0		
DEM	8	1977-96	0		0		
Greens	3	1990-96	0		0		
Others	N/A	1949-96	5	1996	0		N/A

c.

Senate %							
Party	**Elections Stood**	**Years**	**Highest**	**Year**	**Lowest**	**Year**	**Average**
ALP	19	1949-96	50.60	1953	36.20	1996	43.00
LP/NP	19	1949-96	51.70	1975	38.20	1970	44.30
DLP	16	1955-96	11.10	1970	0.10	1990	4.00
DEM	8	1977-96	12.60	1990	5.30	1993	9.40
Greens	4	1987-96	3.20	1996	0.40	1987	2.30
Others	19	1949-96	10.30	1984	1.30	1964	4.90

3. Chapter Two - Electoral Integrity (p5)

Measures To Prevent fraud

Subdivisional or Precinct Voting

I am not persuaded by the Majority Committee and incline to the view of the Australian Electoral Commission, that subdivisional or precinct voting not be introduced.

Recommendation 3.1

That Recommendation 7 of the Majority Committee not be proceeded with.

4. Chapter Three - Preferential and Compulsory Voting (p23)

Compulsory Voting[3]

Voluntary Voting is Not Widely Supported

As I will illustrate later in Figures Three, Four and Five, not only do the people heavily support compulsory voting, but so too do politicians, including 40% of Liberal and National Party politicians. Such views are not however expressed on the Committee which appears to have had appointed to it Liberals of a particular and common viewpoint. Given Labor and Democrats opposition, if the Committee Liberals had been split 40 : 60 on this issue, then the Majority Committee recommendation on voluntary voting would never have got up.

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3 'Compulsory' voting does not mean it is compulsory to cast a vote. It is compulsory to attend a polling booth and have your name marked against the electoral roll as having attended. It is compulsory to place your ballot papers in the box, but it is not compulsory to mark those ballot papers. A small number of Australians do 'vote' in this way.

The recommendation of the Majority Committee for the introduction of voluntary voting appears to be a recommendation for strategic partisan reasons. What is worse, the case for voluntary voting has been argued selectively in this report, lacks empirical integrity, and has been argued without attempting to balance the views of those who support voluntary voting with the alternative case. It is desirable for all Parliamentary Inquiries to receive submissions and oral evidence and present a fair and balanced analysis of all the views put forward, in their reports. With regard to this section this Report does not do so. For instance statements such as at 3.4: 'This opinion is shared by the Committee', is wrong and deliberately misleading. This is an opinion shared by the Coalition majority members of the Committee.

The evident bias and selectivity of this section has unfortunately diminished the credibility of the voluntary voting argument so presented.

The general impetus to a renewed debate on compulsory voting has come in recent years from a minority of senior Liberal Party strategic activists, who see a benefit resulting from an end to compulsory voting. I am deeply concerned with the attempted railroading of this debate and the lack of balance in the Majority Committee Report of this Inquiry.

In an attempt to redress the balance of this Report I will outline the main arguments in favour of compulsory voting, point to the dissenting arguments in the Liberal party for the introduction of voluntary voting, and outline some recent statistical evidence. I will highlight the weaknesses in the arguments put for voluntary voting and point to the division within the ranks of the Coalition on the matter of compulsory voting, both of which have been glossed over in the Majority Report.

A Review of Compulsory Voting

Compulsory voting was introduced into Federal elections in time for the 1925 Federal election, with full parliamentary support. The previous election under voluntary voting had delivered a vote of 57.9%....The AEC have said that since that time the vote has never fallen below 90%.[4]

Compulsory voting is a distinctive feature of the Australian political system. It has persisted for over 80 years since its introduction in Queensland in 1914. Federally there has been all-party support for compulsory voting for 72 years.

While Australia has led the world in this respect, the impression given by the Committee Report that we are virtually alone on compulsory voting, is fundamentally untrue. At least 10% of all countries in the world, being at least twenty one countries,[5] practice compulsory voting at the local, state/provincial, or national level. In Australia alone nine governments all practice compulsory voting.

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4 Submission pS196

5 The following countries have compulsory voting, for all or part of the population, although it is not necessarily carried out in the same way as in Australia. In these countries compulsory voting may, as in Australian Local Government elections, only apply for some of the elections which are conducted: Argentina; Austria; Belgium; Bolivia; Brazil; Costa Rica; Cyprus; Dominican Republic; Egypt; Greece; Guatemala; Honduras; Liechtenstein; Luxembourg; Nauru; Panama; Philippines; Singapore; Switzerland; Uruguay; Venezuela.

Compulsory voting does raise issues of political and democratic principle. Compulsory voting has a practical impact on the electoral system and on political campaign practices. Failure to vote is also punishable by a modest fine of $20.00. It is true that as with all fines, failure to pay the fine can result in a day or two's jail sentence. Out of over eleven and a half million eligible voters, at 3.2 of the Report it is recorded that at least 43 non-voters were so punished in 1993.

Compulsory voting is one of the hallmarks of Australian Democracy. Compulsory voting recognises that not only has voting moved from being a privilege to a right, but it is now very much a duty too. In a High Court judgement, *Faderson v Bridger*, the Court confirmed that voting is a legal duty.[6] Compulsory voting is another area of democratic 'best practice' where Australia has led the world. Historically, it constitutes a significant part of the achievement of political rights and democratic government in Australia and of Australian electoral law. Abolition would have detrimental consequences for social, political and legal processes.

In the period of the development of the Australian system of government, the importance of the right to vote was recognised both by those with institutional political power and those seeking access to it. Voting is the participatory act most accessible to the largest number of citizens. It remains the mechanism that most believe to be the only one available to them for influencing what the government does.[7]

The Commission on Government (COG)

Following the 1992 Royal Commission into WA Inc the West Australian Government appointed the Commission on Government (COG) to range widely and deeply over parliamentary, electoral, administrative, and governmental matters. COG has without doubt conducted one of the most extensive reviews of our political systems and principles this century.

COG unequivocally recommended the retention of compulsory voting.[8] The Commission found that compulsory voting ensured the expression of the choice of the majority of the electorate which assists in legitimising the entire electoral process and the parliaments chosen by it.

The Commission also found that compulsory voting diminishes the opportunities for corrupt, illegal or improper practices during elections. Compulsory voting guarantees more than a 90 percent turnout on polling day, which makes it extremely difficult for the practice of multiple voting to occur undetected. It also prevents manipulation of the electoral process by removing the opportunity for parties/candidates to bribe electors to vote when they otherwise may not have cast a ballot.

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6 Submission G. Orr pp4-5

7 Kleppner, Paul., *Who voted? The dynamics of electoral turnout, 1870 - 1980* New York: Praeger, 1982: 4

8 Commission On Government Western Australia: Report No 1: August 1995: Recommendation 47.

At Page 316 of the COG Report is the following:

> A speaker at the Harvey public seminar reminded the audience of this State's experience of campaigning prior to the introduction of compulsory voting:
>
> > Well, I'm old enough to remember when it wasn't compulsory voting. My family were very into politics in Harvey - it was May Holman's time - and I used to go around in cars with politicians and pick up voters. We only took our own people, our own party. We brought them back to vote.
> >
> > There was a lot of dirty work going on in those days. You bribed people to come and vote for your party even though they didn't belong to your party. When compulsory voting came in, it cut out a lot of that. I was only in my teens, but I knew a lot of it was going on. It was common knowledge. It was disgusting.

Main Arguments for Compulsory Voting

The main arguments in favour of compulsory voting are:

- it is the civic responsibility of citizens in a democratic society. Voting is a duty. Each citizen must take responsibility for who governs them and how they are governed;
- compulsory voting ensures the expression of the choice of all eligible to vote, not just of those who vote, and not just the majority of those who vote. It ensures, as far as possible, that Parliaments are elected according to the wishes of all of its citizens;
- compulsory voting materially assists in legitimising the entire electoral process and the parliaments chosen by it;
- social and political cohesion is promoted, and alienation from the political process by the disadvantaged is diminished. Compulsory voting ensures the representation of all community groups;
- citizens develop a sense of ownership of the political and decision-making process;
- compulsory voting contributes to civic education and the entrenchment of civic values;
- elections focus on the issues and choices before the voters rather than concentrating on mechanisms to get people to the polls;
- compulsory voting diminishes the opportunities for the exercise of corrupt, illegal and improper practices (such as the buying off of members of the community) during elections;
- the compulsory voting system makes it extremely difficult for the practice of multiple voting to occur undetected; and

- the cost of elections is high for political participants. Not having to get voters out, as for voluntary voting, saves expenditure which can be used for other campaigning activities.

Compatibility of Compulsion With Individual Liberty

At the core of the debate is the issue of the duties of citizenship and whether the use of compulsion is justifiable in a democracy.

There are numerous instances of compulsion in society, not least of which is taxation.

The basic argument in favour of compulsion is that voting is a positive obligation or duty owed by the citizen to the polity because voting is not only a specific electoral choice but has profound political and social significance. While opponents of compulsion believe that individual liberty is offended in compelling the exercise of the vote, proponents see the necessity for balancing rights with obligations and duties. Chris Sumner, former Attorney General, in the debate in the South Australian Parliament on compulsory voting argued that 'rights and duties in our society co-exist':

> A society that marginalises or alienates some of its citizens can hardly claim to be democratic in the fullest sense of the word. Both individual rights and social duties are essential prerequisites for a free, stable and equitable society. Surely it is better that our Parliaments are representative of the poor, the disadvantaged and minority groups as well as the rich, the powerful and the middle classes.[9]

It has long been accepted by peoples and governments that citizenship carries with it responsibilities as well as rights. Rights and responsibilities exercised by citizens are essential for the proper functioning of a democratic society. The responsibilities of citizenship include jury duty, giving evidence in court proceedings, the defence of the country, compulsory education, the payment of taxes, compulsory voting and other such 'duties'. These are obligations associated with citizenship. Australians are compelled to perform jury duty and pay taxes because society is materially enhanced by the widest possible participation in its affairs. Similarly, the representative nature of Parliament is enhanced by the widest possible participation. What more important civic responsibility is there than the duty to vote - to decide who is elected and who will govern?

It is a false premise therefore to suggest that the compulsion to vote is somehow unusual or an exceptional requirement on citizens. There is an extensive system of laws and regulations governing people, which have a similar effect on individual liberty.

In making voting not only a right but also a duty, Australia has reinforced the fact that our laws are enacted by a majority of the electors represented by a majority of the members of Parliament. No one should be exempted from the choice of those who are to make laws under which each of us must live.

Senator Herbert Payne (Nationalist Tasmania) introduced the *Commonwealth Electoral Bill 1924* into the Senate. Edward Mann, the Nationalist Member for Perth who introduced the

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9 South Australia, Legislative Council, *Parliamentary Debates*, 23 March 1994: 284

Bill into the House of Representatives, argued that the generally low turnout at Federal elections under voluntary voting vitiated the reality of democratic principles. For this reason in his Second Reading Speech, Mr Mann suggested that compulsory voting must not only be considered a privilege but a duty. He stated:

> The people should be jealous of their democratic privileges: and we have the right to ask of them that they should regard those privileges, not only as something they ought to prize, but as involving a duty which they should perform, and the performance of which the state has a right to demand of them.[10]

Compulsory Voting Ensures that the Influence of Elites, Pressure Groups, or Extremists is in Proportion to Their Support

The involvement of *all* citizens in an election provides protection against domination by minority interest groups, the economically powerful and other elites. The elitist opportunities offered by voluntary voting systems do appeal to some political strategists. The corruption of the political process is possible where pressure groups are able to exercise pressure and influence which is out of proportion to their level of support in the community. Compulsory voting reduces the impact of well financed interest groups and of political extremists.

Elections Focus on Issues, Not Extent of Turnout

Compulsory voting has the effect of focusing election campaigns on issues, not on persuading electors to vote. The primary task of candidates under a compulsory voting system is to persuade voters to support them, their policies, and the party they represent. Under voluntary voting the primary task is to get the party's supporters to turn out and vote for them.

The emphasis on encouraging attendance at the polls also means that instead of focusing attention on developing policies and proposals for legislation, candidates and parties must be primarily concerned with the turnout of supporting voters. The need to get supporters out may also fuel a need to identify more extreme positions on issues, on an assumption that passion prompts participation.

The suggestion in the Majority Report that somehow voluntary voting will produce 'a higher level of political debate and political advertising' as argued by Rod Cameron, is not supported by comparative analysis. Former Liberal strategist, now MHR Peter Georgiou, in a lecture to the John Stewart Mill Society on compulsory voting, refuted what he called the 'Rod Cameron insight'. Mr Georgiou drew attention to the key election campaigns produced in the United States and the United Kingdom, the major English speaking democracies which have voluntary voting, and demonstrated that the higher realms of political discourse did not materialise under voluntary voting.[11]

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10 Commonwealth Parliamentary Debates, House of Representatives 24 July 1924: 2446

11 Georgiou, Peter, *The Case for Compulsory Voting*, the Inaugural Meeting of the John Stewart Mill Society, Parliament House, Canberra, 29 October 1996

In that speech Mr Georgiou discussed and refuted what he called the seven key arguments against compulsory voting. Most importantly he rejected the philosophical argument that the right to vote must logically entail the right not to vote. Mr Georgiou argued that so-called compulsory voting is not a compulsion to vote, 'it is a compulsion to attend the polling place, get one's ballot paper and, marked or unmarked, and put it into the ballot box.'[12]

There is no doubt whatsoever that voluntary voting will *decrease* the vote. With reasoning that can only be described as perverse, the Committee Report records with approval 'high' voter turnouts in voluntary voting systems that have the effect of between 12% (NZ) and 50% (USA) *not* voting! How would that same Committee argue if 12-50% of our society did not pay taxes, do jury duty, or defend the country?

Let us examine a worst-case scenario, (bearing in mind that Australia's lowest voluntary vote prior to compulsory voting was 57.9%). In the 1996 USA Presidential election, the voter turnout was only 49%, of which President Clinton achieved 50%, or only 24.5% of the total electorate. How can anyone believe the American voluntary voting system gives full legitimacy to its leaders when President Clinton can only legitimately claim the support of one quarter of the American people? Such a narrow vote exhibits alienation, disenfranchises sectors of the community, and leaves them without full and proper representation. At its worst voluntary voting can be highly elitist and selective. It can - and in practice does - exclude large sectors of the population.

In contrast John Howard and his Coalition took government in Australia with 47% of the vote of the eligible voting population, nearly double the legitimacy of President Clinton's vote, and in a much cheaper election.

Compulsory voting ensures that all Australians participate in the election of government. This not only offers greater legitimacy to the election result, but ensures that the ballot box has told the government just where *total* voter sentiment lies. It therefore has to listen and to remain accountable to *all* sectors of the community. This has positive benefits in the resolution of societal conflicts through our democratic process.

The overall result of the introduction of voluntary voting will be a significant downturn in popular participation in our political process. It will also result in a need for costly, extensive canvassing efforts. The additional risk will be that the lower socio-economic and marginalised groups in Australian society would feel they have little say in the electoral process. People who do not vote are likely to be those most alienated from the political and civic processes. These are not, by and large, Liberal Party voters - hence the advocacy of voluntary voting by a number of Liberal Party strategists. A voting system that leaves many citizens unrepresented has to be questioned.

Is There Strong Popular or Political Support for the Abolition of Compulsory Voting?

In Australia, polls conducted in 1995 and 1996 which questioned those surveyed on voting behaviour, provide evidence of considerable public support for the retention of compulsory voting.

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12 Ibid: 6

A national telephone poll by the Bulletin and Morgan group, conducted on 31 August 1995, asked the question of 531 electors: should voting at federal and state elections be voluntary or compulsory?[13]

Figure Three - Bulletin Morgan Poll

	June 1974	August 1995	ALP	N-LP	Other	Undecided
Compulsory	60%	60%	63%	59%	57%	49%
Voluntary	36%	39%	36%	40%	37%	51%
Can't Say	4%	1%	1%	1%	6%	-

It is interesting to note that not only did a majority of electors support compulsory voting, but a strong majority of those surveyed who identified their support for a political party also supported compulsory voting.

A national telephone poll by the Herald/AGB-McNair group, conducted on the 1-3 November 1996, asked 2 060 electors the question: do you agree or disagree that voting at Federal elections should be compulsory?[14]

Figure Four - Herald AGB/McNair Poll

OPINION	PER CENT
Agree	72%
Disagree	25%
Neither Agree or Disagree	2%
Don't Know	1%

Once again, it is clear that a majority of electors in Australia believe that voting in elections should be compulsory. Clearly there is no widespread support for voluntary voting. The political campaign for voluntary voting represents the view of a faction of the Liberal Party, (but obviously a faction well represented on this Committee!)

One of the questions asked in a recent study into the attitudes of candidates standing at the 1996 election, was whether voting at federal elections should be compulsory (see Figure Five). The results of the survey suggest that compulsory voting is supported by a majority of members in Parliament, and that would be evident if they were allowed a personal view on this matter.

13 The Bulletin, September 12, 1995 p 15

14 Sydney Morning Herald, Saturday 9 November 1996, page 13

Figure Five - ANU Candidate Study[15]

	CANDIDATE'S PARTY				HOUSE		RESULT		ALL
COMPULSORY VOTING	LIB/NP	ALP	DEM	GRN	REPS	SENATE	LOST	WON	
STRONGLY FOR CV	24.40%	94.40%	61.30%	55.90%	58.40%	57.40%	60.60%	50.50%	58.20%
FOR COMPULSORY	16.00%	1.90%	20.70%	24.70%	16.30%	11.80%	16.70%	11.90%	15.50%
FOR PEOPLE CHOOSING	31.10%	2.80%	9.90%	14.00%	13.20%	23.50%	12.70%	21.80%	14.80%
STRONGLY FOR PLE	28.60%	0.90%	8.10%	5.40%	12.10%	7.40%	10.00%	15.80%	11.40%
NUMBER OF CASES	119	108	111	93	363	68	330	101	431

The table shows that 40.4% of all Liberal / National Party candidates supported compulsory voting. Of that 40.4%, 24.4% *strongly* supported compulsory voting. With the other political parties support for compulsory voting was overwhelming. 96.3% of all Labor candidates supported compulsory voting, of that 94% were *strongly* in favour of compulsory voting. Among the minor parties, 82% of candidates for the Australian Democrats and 80.6% of the Green candidates supported compulsory voting, with 61.3% and 55.9% respectively *strongly* in favour.

On a 'House' basis, 74.7% of the total of candidates for the House of Representatives supported compulsory voting, while 69.2% of Senate candidates supported compulsory voting.

Taking the attitudes of all the candidates together, 73.7% supported compulsory voting, of that 58% *strongly* supported compulsory voting. These results are remarkably similar to the 72% share shown in the popular poll at Figure Four. Anyone want to take bets that the powerful parliamentary minority campaigning for voluntary voting would not allow a conscience vote!

Party politics aside, there remains an ongoing debate over the ethical basis for compelling citizens in a free society to exercise their rights or fulfil their responsibilities. If this is to be tested again, then it must be tested at a referendum. This is an issue which can not be left up to politicians alone.

Recommendation 4.1

The proposal to abolish compulsory voting is a fundamental issue which strikes at the very heart of Australian democracy, and which strikes at Australia's constitutional and electoral record of demonstrating world's best democratic practice.

a) The Australian Democrats oppose Recommendation 12 in the Majority Report.

b) Any successful proposal to repeal section 245 of the *Electoral Act* and section 45 of the *Referendum Act* must be tested at a referendum.

15 ANU/UQ/UNSW Australian Candidate Study 1996: C6.

Albert Langer and Section 329A of the *Electoral Act*

The introduction of sections 270(2), 329(3) and 329A of the *Electoral Act* were intended to protect people who made an inadvertent error in casting their vote. Unfortunately the beneficial effect of these sections is now being undermined by the deleterious effects of special pleadings. As an increasing number of citizens wilfully defy the law by encouraging voters to use a form of optional preferential voting using these sections in the *Electoral Act*, the AEC has been obliged to launch injunctions and/or prosecutions during an election period.

At the 1996 Federal Election 48 979 exhausted votes for the House of Representatives were saved from informality by section 270. This was despite the Albert Langer campaign, which was an offence under the *Electoral Act*, advocating the use of section 270(2) as a means of achieving a form of optional preferential voting. Although the exhausted votes cast in such a manner only represent 0.4% of the total number of votes, the costs to the Electoral Commission in pursuing citizens who break the law by advocating the practice of exhausting one's vote is an unnecessary burden.

The Australian Democrats do not support the advocacy of informal voting. If Recommendation 13 of the Majority Report is accepted and the explicit legislative bans repealed, the ability of Mr Langer and others to generate considerable publicity during an election period will also be removed. The effect will be to reduce the likelihood of the AEC having to seek legal action against individuals during an election period.

Recommendation 4.2

The Australian Democrats support the Majority Report's Recommendations 13, 14 and 15.

Preferential Voting for the Senate

Multiple Group Voting Tickets

Section 7 of the Constitution states that Senators for each State shall be directly chosen by the people of the State, voting as one electorate. The Majority Report has recommended that the government seek advice on the constitutional validity of sections 272(2) and (3) of the *Electoral Act* which allow a Senate group to lodge a multiple group voting ticket.

There are two issues here. First is whether the advice sought should be restricted to multiple group lodging tickets, but also extend to party boxes. Second, Recommendation 16 of the Majority Report proposes directing this advice not to the Committee, or to the Senate, but to the government. I object to this. All Senators must have an opportunity to contribute and hear directly, the advice of the Attorney-General's department or any other department or authority on this issue, without it being filtered by the Executive.

While I do not object to a review of the Constitutional validity of these sections of the *Electoral Act*, I believe that such an inquiry should be conducted through a Parliamentary committee, reporting to the Parliament, and not the Executive as suggested. Once again I

point to the need for openness and public debate on any proposed reforms of the electoral system.

Recommendation 4.3

The Australian Democrats recommend that before the next election, the Joint Standing Committee on Electoral Matters seek advice on the constitutional validity of sections 272(2) and 272(3) of the *Electoral Act*.

Influence of Minor Parties

I cannot let evidence included in this section pass without comment.

West Australian MHR Wilson Tuckey, Liberal Party member for the O'Connor House of Representatives seat, submitted that groups which fail to achieve 10% of Senate first preferences should be declared defeated. In the 1996 Federal election, Mr Tuckey got 56% of the vote and 38 607 votes, a convincing win.

At the same election, in the West Australian contest for the 1996 Senate, I achieved the most 'below the line' first preference votes, more than any other of the 29 Senate candidates. 'Below the Line' votes are accorded against the name of the Senate candidate. My 11 257 votes were 1.4 times better than the best WA Liberal result, which was for Senator Winston Crane, who in contrast in his own right achieved 8 305 'below the line' votes. My 'above the line' (party box) first preference votes were 79 843, totalling 93 938 votes altogether, and 9.35% of the vote. My total vote was 2.4 times Mr Tuckey's. Even accepting the different electoral systems for the two Houses, Mr Tuckey has an odd view of democracy which would see 93 938 Western Australians denied representation by me, but 38 607 West Australians satisfied by him.

Other submissions concerning the Senate proposed changing the Senate's method of election. The figures I have provided in Section 2 of this Minority Report clearly indicate that voters not only do vote differently in the Senate to the House of Representatives, but obviously consistently wish to do so. On the evidence to the Committee, there is no significant concern that the existing system needs changing.

Recommendation 4.4

That the Electoral System for the Senate be left operating as at present.

5. Chapter Four - Enrolment and Voting By Certain Groups (p39)

There are a number of matters here, such as Recommendations 21 on ATSIC elections, and 24 on Prisoners voting, on which I need to consult further. I will address these matters if they come to legislation.

6. Chapter Five - Enrolment And Voting: Other Issues (p53)

Declaration Voting

The Return Of Postal Votes

With regard to Recommendation 32 of the Committee Report I favour greater flexibility and believe that this recommendation should only apply if the postal vote envelope is not postmarked, or if the postmark is illegible.

Recommendation 6.1

Amend Recommendation 32 that this recommendation should only apply if the postal vote is not postmarked, or if the postmark is illegible.

The Two Candidate Preferred (TCP) Count

Recommendation 36 of the Committee Report seeks to speed up the declaration of the count. In theory there is nothing wrong with the idea that the count should be declared early when the last two candidates are clear of the other candidates. Where the total number of votes for the 3rd, 4th, 5th etc candidates is less than the first preference figure for either the first or second candidate, then the declaration of the poll should proceed based on the result of the TCP. However flexibility must be built into the system to allow a change of preferred candidate during the count when it becomes apparent that another candidate has emerged as the preferred candidate.

The count must not be shortened if the result could have been changed by so shortening it.

A full count must be conducted later by AEC staff for the purposes of the public record. However I believe this could be done after the declaration of the result, and without the need for scrutineers.

Recommendation 6.2

Amend Recommendation 36 of the Majority Report to accord with the requirement to publish the full count.

AEC Public Awareness Campaign

Voters appear to have a widespread belief that if they do not vote for either of the two major parties, Labor and the Liberals, that that is a wasted vote. This belief heavily undermines the virtues of the preferential voting system. The Australian Democrats will amend the Act to require the AEC to include in its public awareness expenditure a more material amount dedicated to explaining the preferential voting system.

Democrats Senator Meg Lees made a submission to the Inquiry into the 1993 Federal election on this same matter. It is the view of the Australian Democrats that there has been little

improvement in the aspects of voter education that Senator Lees drew attention to. In her evidence, Senator Lees wrote:

> Such perceptions are indicative of the sweeping ignorance of the mechanics of the preferential system of voting, and a lack of understanding that the voter has the ultimate power to direct his or her vote.
>
> Any volunteer who has handed out How-to-Vote cards for a candidate or party will attest to the extent of public confusion and uncertainty on this subject.
>
> The specific points of confusion can be classified as follows:
>
> **Who decides preferences**. Perhaps because media reports often refer to the 'direction' of preferences by one party to another, and sometimes to their 'exchange', there is a belief that parties or candidates ultimately decide what will happen to their vote. This, of course, is only true with regard to above-the-line Senate voting.
>
> **What happens to a vote** if the No.1 candidate on that ballot slip does not win a simple majority. There are ideas that these votes are set aside, left out, diluted in some way, even given to another party as the result of a secret agreement.
>
> **The status of How to Vote Cards.** Some people believe that it is necessary to follow a card in order to record a formal vote. (The quickest way to redress this would be to ban How to Vote cards at the polling booth.)

There is still widespread public confusion concerning the differences in the counting system for the Senate and the House of Representatives.

Recommendation 6.3

That the AEC Public Awareness Campaign specifically target voter education on preference voting, and voter confusion over the count for the Senate and House of Representatives.

7. Chapter Six - Nomination Of Candidates And Registration Of Parties (p69)

Section 44 Of The Constitution

Recommendation 39 of the Committee Report seeks to end the saga of difficulties that Section 44 of the Australian Constitution has caused.

The House Of Representatives Standing Committee On Legal And Constitutional Affairs is concurrently inquiring into Sections 44(i) and (iv) of the Australian Constitution. In broad terms the Australian Democrats submission to that Committee supported the recommendations of the *Constitutional Commission 1988.*

The Australian Democrats have sought to alter Section 44(iv) of the Australian Constitution three times, through the *Constitutional Alteration (Qualifications and Disqualifications of Members of the Parliament) Bill 1985*; the *Constitutional Alteration (Qualifications and*

Disqualifications of Members of the Parliament) Bill 1989; and the *Constitutional Alteration (Qualifications and Disqualifications of Members of the Parliament) Bill 1992.*

We therefore strongly support any effort to end the current very unsatisfactory political victimisation and political disadvantage which is the consequence of Section 44.

Endorsement Of Candidates By Political Parties

Disendorsed Candidates

There is a problem with persons being officially registered by the AEC as nominated candidates, but either deliberately or unavoidably misleading the Electorate as to their party allegiance.

In 1996 there were apparently two examples. The first example is that of MHR Pauline Hanson, Member for Oxley. Ms Hanson was the official Liberal Party candidate but was disendorsed and expelled from that party prior to the election, but *after* AEC acceptance of her nomination. Consequently all official documents, particularly the ballot paper, had her recorded as the Liberal Party's official candidate, even though she stood as an Independent. It appears likely that some Oxley voters were misled into believing that Ms Hanson was their Liberal Party candidate, which would have added to her vote. It appears that for all practical purposes such a misleading situation was unavoidable.

The second example is that of Senator Bob Brown, who was nominated by and stood as the official Tasmanian Greens lead Senate candidate, was accepted by the AEC as such, and so appeared as such on the official ballot paper. After the election, at all times since, Senator Brown has styled himself as the representative of another political party, the Australian Greens, without ever being expelled or disendorsed by the Tasmanian Greens party. It seems possible or likely that Senator Brown attracted more Tasmanian votes by representing himself as a Tasmanian Green, than if he had been shown as an Australian Green.

Recommendation 7.1

a) That if an AEC registered candidate is disendorsed by a political party or expelled by that party between the time of AEC official acceptance of that nominated candidate and the date of the election, then the AEC must ensure all polling stations and polling booths in the relevant electorates clearly indicate that fact;

b) That if a Parliamentarian is elected as a representative of a political party, unless he or she resigns or is expelled from that particular party, or that party has a name change or ceases to exist, then they must continue to style themselves as being from that party.

Registration of Party Names

It is a pity that this section of the Report does not deal with measures to ensure the integrity of official party registration with the AEC. The Australian Democrats would wish to ensure that AEC requirements for minimum party membership obligations be re-examined at a later date, and that appropriate protections be provided against political sabotage through the registration process.

Recommendation 7.2

That the provisions relating to the Party Name registration be reviewed and tightened.

8. Chapter Seven - Election Campaigning (p81)

Truth in Political Advertising

The Australian Democrats have actively campaigned to introduce Truth in Political Advertising legislation in Australia since the early 1980s. It is our belief that not only is it possible to legislate against false or misleading political advertising, but it is incumbent upon the legislature to do so if we are to help restore trust in politicians and the political system.

This belief has been vindicated in South Australia, where Truth in Political Advertising legislation has long been in place. The South Australian legislation has been tested in the Full Court of the Supreme Court of South Australia, where it was found not to impede the implied right of 'freedom of speech' and was therefore held to be constitutionally valid. Given the success of this legislation, the Australian Democrats strongly urge similar legislation be adopted by the Commonwealth.

After the 1983 Federal election the First Report of the Joint Select Committee on Electoral Reform (of which Australian Democrats Senator Michael Macklin was a prominent member) recommended the prohibition of untrue, misleading or deceptive advertising.

Such a provision was included in the *Commonwealth Electoral Legislation Amendment Act 1983.* The provision became Section 329(2) of the Act, which provided:

> (2) A person shall not, during the relevant period in relation to an election under this Act, print, publish, or distribute, or cause, permit or authorise to be printed, published or distributed, any electoral advertisement containing a statement -
>
> (a) that is untrue; and
>
> (b) that is, or is likely to be, misleading or deceptive.

It was a defence under the Act if the person proved that he or she did not know, and could not reasonably be expected to have known, that the electoral advertisement contained a statement of the kind identified above.

The offence created was supported by the subsequent section 383 of the same Act, which provided that a candidate or the Electoral Commission could seek an injunction from the Supreme Court in the relevant state to prevent any breach of the Act.

On August 24, 1984, the Joint Select Committee on Electoral Reform's *Second Report* concluded that it was not possible to control political advertising by legislation and recommended the new section 329(2) be repealed, maintaining that:

> in its present broad scope the section is unworkable and any amendments to it would be either ineffective, or would reduce its scope to such an extent that it would not prevent dishonest advertising.

The Australian Democrats disagreed with this view. In a dissenting report Senator Macklin identified flaws in the Majority argument. He stated:

> I do not believe that any evidence was presented to the Committee to show that it is inherently more difficult to separate fact from opinion in this political area ...The majority of citizens do not have access to sufficient documentation to enable them to arrive at a reasonable judgement concerning whether or not the advertisement is false or misleading ... [consequently it was] a matter of community concern that a voter may be misled into forming a political judgement by an advertisement which is untrue and misleading or deceptive.

The *Electoral and Referendum Amendment Bill 1984* which sought to repeal section 329(2) of the *Electoral Act* was introduced by the Government on October 8, 1984. On October 16, 1984, during the Committee stage of debate on the Bill in the Senate, Senator Macklin sought to amend section 329(2) rather than let it be repealed.

The amendments went to the legitimate concerns of the Majority Report, and sought to place the force of the Section on the individual, political party or company which authorised the advertisement, and excluded the printers, publishers or distributors as included in the original section. Senator Macklin also offered to water down the category of person/company who could seek an injunction in relation to an advertisement, suggesting the right to seek an injunction be restricted to the Electoral Commission.

Senator Macklin's amendments were defeated. The *Electoral and Referendum Amendment Bill 1994* was passed without those amendments, and section 329(2) was therefore repealed.

In November 1994, the Joint Standing Committee on Electoral Matters Inquiry into the Conduct of the 1993 Federal Election and Matters Related Thereto looked at the issue of Truth in Political Advertising.

The (ALP Government) Majority concluded that no evidence had:

> provided an argument to convince a majority of the Committee that legislation would be more workable now than when subsection 329 (2) was repealed in 1984.

There were two dissenting reports on this matter, one from Australian Democrats Senator Meg Lees and the other, a joint dissent, from *members of the Coalition* and WA Greens Senator Chamarette.

The Democrats' dissenting report by Senator Meg Lees stated:

> While the Australian Democrats accept that political advertising promotes 'intangibles, ideas, policies and images' this is not unlike advertising for many commercial 'products' and services which are subject to the criterion of 'truth'. Moreover, the Australian Democrats contend that there are examples of political advertising that are clearly dishonest and have no basis in fact. For example, some political advertising has asserted that a parliamentarian has voted for a particular measure when scrutiny of the public record indicates this to be patently false.
>
> The Australian Democrats contend that perceived problems in achieving 'truth' in advertising have been over-emphasised. As a result, the community's view of politicians is that they cannot be trusted to tell the truth. The issue will need to be seriously addressed if the public's cynicism is not to be further deepened.

Both Dissenting Reports noted that truth in advertising legislation had worked very effectively in South Australia; that if some of the misrepresentations which had occurred during election campaigns were to occur in the private sector, perpetrators would find themselves liable for prosecution under the *Trade Practices Act*; and that legislation similar to that in South Australia at a national level would protect electors against misleading advertising.

Both Dissenting Reports also recommended the reinstatement of the former section 329(2) of the Commonwealth *Electoral Act*.

The South Australian Legislation

In 1985 the South Australian Parliament passed the *Electoral Act*. Section 113(1) of the Act provides that it is an offence for a person to authorise, cause or permit the publication of an electoral advertisement which contains a statement purporting to be a statement of fact, but which is inaccurate or misleading to a material extent.

A statutory defence is provided if the defendant can prove that he/she took no part in determining the contents of the advertisement and that he/she could not reasonably be expected to have known that the statement to which a charge relates was inaccurate and misleading.

Under the South Australian model a complaint can be brought by a candidate, or by the Electoral Commission, to the Department of Public Prosecutions. The DPP then decides how and whether to proceed.

Section 113(1) was recently tested in an appeal to the Full Court of the Supreme Court of South Australia, in *Cameron v Becker* (1995) 64 SASR 238. The Court found that section 113 is directed only to statements purporting to be statements of fact, and has no application to expressions of opinion. Importantly, the Court found that the limitation imposed by section 113 is manifestly proportionate to the legitimate object of ensuring that what is represented as factual material is accurate and not misleading, and that as such, it breached no implied right of "free speech" contained in the Constitution.

Recommendation 47 of the Majority Report proposes to prohibit 'misleading statements of fact' in electoral advertising. This is a welcome recommendation, but while the Australian Democrats support Recommendation 47 it does not go far enough.

The words 'misleading statements of fact', recommended by the Majority Report, are narrowly constructed. Given the High Court's strict interpretation of the meaning of section 161(e) of the *Electoral Act* in the case of *Evans v Crichton-Brown* (1981) 147 CLR 169,[16] such an amendment is unlikely to cover advertising which is 'inaccurate' or '*likely* to be misleading'.

It is the view of the Australian Democrats that the approach taken in the *Electoral Act 1985* (South Australia) is the simplest form of Truth in Political Advertising legislation. It has been in place for over 10 years and it has been successfully tested in court. It should be adopted as the basis for amendments to the Commonwealth *Electoral Act*.

Recommendation 8.1

The Australian Democrats recommend the Commonwealth Parliament adopt the wider definition of 'inaccurate or misleading statements of fact... which is, or is likely to, mislead or deceive', in amending the Commonwealth *Electoral Act*. Such a construction of the Truth in Political Advertising clause would be similar to the approach taken to Truth in Advertising legislation by the South Australian Parliament.

The Authorisation Provisions of the Electoral Act

Section 328 of the Electoral Act

I have considerable sympathy for the position put in evidence by MHR Wilson Tuckey, Member for O'Connor, in section 7.30/31 of the Majority Report. His case would not be the first time that 'penniless' individuals have been used as fronts for attacks on their political opponents. I am doubtful that the financial disclosures provisions of the Act will in fact throw much light on Mr Tuckey's case.

Recommendation 8.2

That the *Electoral Act* be strengthened to prevent hidden authorisations and funding being used to attack political opponents.

16 In *Evans v Crichton-Brown* (1981) 147 CLR 169, the High Court found that s. 329(1) only prohibits advertising that misleads voters in the basically procedural aspects of how to mark a ballot paper and deposit it in the ballot box.

Provision of Elector Information to Political Parties and MPs

Provision of Gender and Age Details

Recommendation 52 of the Majority Report seeks to provide gender, age, and salutation details to MPs and registered political parties. The Australian Democrats believe that the provision of elector information, such as the gender and age details of constituents, intrudes unnecessarily into the privacy of constituents, given that this information is not necessary for official purposes[17] and it would serve no public interest benefit.[18]

It is not the Australian Electoral Commission's or the public's role to provide this level of campaigning detail to sitting Members of Parliament, or their political parties. The Majority Report's recommendation will have the effect of providing public resources to boost incumbency. In addition, the information which this recommendation seeks, contravenes the right to privacy by citizens. The Privacy Commissioner has not supported the provision of gender, age and salutation details to Members of Parliament and neither do we.

Recommendation 8.3

The reservations of the Privacy Commissioner as to the public interest served by the provision of this information, reinforce the decision of the Australian Democrats to reject Recommendation 52 of the Majority Report. Furthermore, the recommendation encroaches onto the independence of the AEC by requiring them to collect and pass on to parliamentary incumbents, using public resources, valuable campaigning details and material.

Other Issues

For reasons fully explored in my comments on Chapter 3, I do not accord with the view on compulsory voting expressed in 7.69.

How-to-Vote Material

Rules and regulations controlling the distribution of how-to-vote material varies between states and the Commonwealth. The Tasmanian *Electoral Act* bans the distribution of how-to-vote cards on polling day. Section 246 of that Act provides that it is an offence to:

- distribute any: advertisement, how-to-vote card, handbill, pamphlet, poster, or notice containing any electoral matter on polling-day; and
- publish or cause to be published in a newspaper an advertisement containing any electoral matter on polling-day.

17 AEC, Submission pS1494

18 Privacy Commissioner, Mr Kevin O'Conner, Submission pS1967

How-to-vote cards can be distributed prior to polling-day, and can be taken by electors to a polling-place to assist them with their vote, but such cards must not be displayed or left in the polling-place.

In the Tasmanian Act, a person is not permitted to canvass for votes or attempt to sway voters within 100 metres of a polling-place.

The NSW State Electoral Office issues guidelines relating to how-to-vote cards. The restrictions within the guidelines are contained in sections 151A, 151F and 151G of the NSW *Parliamentary Electorates and Elections Act 1912 No 41*, and apply only to material distributed on polling day.

In summary, under the NSW guidelines:

- how-to-vote material cannot be distributed on polling day unless it has first been registered with the Electoral Commissioner.
- Applications and submissions of material for registration must be made between the period commencing on nomination day and concluding eight days before polling day.
- A party, group or candidate must be registered under the *Parliamentary Electorates and Elections Act* (Party) or the *Election Funding Act* before how-to-vote material in support of their campaign can be distributed on polling day.
- Material submitted for registration is confidential and not available for inspection by a third party until election day.
- Where material is to include details of order of preference for candidates, those details must be shown in the material submitted for registration.
- For the registration of how-to-vote material, the application must be made and signed by the candidate or the candidates official agent; or the Registered Officer of the party; or by the candidate's in the group or their official agent.
- Distribution of properly registered material can be undertaken by any person. However, if the material is illegal, the distributor is liable to prosecution.

The system of registration in NSW seeks to restrict the possibility of bogus how-to-vote cards being issued on polling day. The penalties for breaches are outlined in the Act.

The Australian Democrats favour aspects of the law as it stands in Tasmania regarding how-to-vote cards. In addition to this, the Democrats advocate a registration system for how-to-vote cards such as the system currently in use in New South Wales.

Recommendation 8.1

With regard to how-to-vote provisions the Australian Democrats recommend the melding of the Tasmanian and News South Wales laws into the Federal law.

Recommendation 8.2

That the AEC take an early opportunity to trial, at a by-election, systems of displaying how-to-vote material inside polling booths.

Recommendation 8.3

Each AEC polling booth electoral officer should be required to collect one sample of each how to vote card handed out, for records and analysis purposes.

9. Chapter Eight - Election Funding and Financial Disclosure (p99)

The Funding and Disclosure Provisions

The public demand for transparent and fully reported political party funding and disclosure is proper, insistent, and must be heeded. Public disquiet concerning perceived overt and covert links between donations to political parties, and their policies and actions, continues to be very high. For these reasons, and for those of the desirability of a sound and honest political system, we must be very wary of any changes to political disclosure provisions which do not enhance the goal of transparent and full disclosure.

One of the States has recently re-examined this matter through its Commission On Government (COG). The WA Inc. years emphasised to Western Australians the potential for corruption in public life, and indeed the existence of it. The risk of corruption is greater where money is involved. Two ex-Premiers, one ex-Deputy Premier and a number of business associates were jailed following a Royal Commission into their activities during this period. Other states, notably Queensland and New South Wales, have had widespread corruption exposed. This, plus the 'Colston affair', has added to profound Australian distrust of politicians and of the political system.

Western Australia's Government appointed COG fully endorsed the principles of full disclosure and made a number of recommendations thereto.[19] COG emphasised that full disclosure laws are essential to reduce the potential for corrupt, illegal and improper conduct.

Part XX of the Commonwealth *Electoral Act* establishes public funding provisions for political parties and a disclosure scheme of political donations and electoral expenditure. Public funding and the comprehensive disclosure scheme is in place to prevent, or at the very least discourage, corrupt, illegal or improper conduct. It is premised on the belief that

19 Commission On Government Western Australia: Report No. 2 Part 2: December 1995

politicians should not be 'bought or beholden' to wealthy interest groups or individuals. A comprehensive disclosure scheme protects politicians from pressures that may be placed on them if political donations are made in secret. By establishing a requirement that donations and expenditure of political parties be publicly available, political parties are open to scrutiny and are made accountable to the public.

The Australian Democrats believe that political parties and organisations cannot be treated as purely private bodies with full confidential rights. Political parties have a huge impact on public life and the nation as a whole. Therefore it is in the public interest that these organisations are placed under strict disclosure legislation to help ensure that the political system remains free from corruption and improper conduct.

Funding of a political party or parliamentary candidates must be open to public inspection and public scrutiny. In this way the opportunity to buy political parties or a parliamentary candidate will be minimised. The privacy considerations of the donor and the recipient of the funding are subordinate to the public interest in preventing the potential corruption of political life. The Democrats believe that comprehensive disclosure legislation goes some way to ensure that political parties are not bought or beholden to wealthy and powerful sectors of the community - to the detriment of the whole community.

Proposed Amendments

Reporting Thresholds - Amounts Received

In relation to the need for a minimum reporting threshold for donations, in its Recommendation 128 COG recommended that the disclosure of amounts under $1500 by political parties, or under $500 by candidates, was not necessary. In Recommendation 128 COG also recommended the immediate disclosure of donations over $10 000 by the recipient to the Electoral Commission, who would then release this information to the public. For disclosure purposes this has the virtue of overcoming the long delay before significant donations are picked up in the annual returns. COG recommended that the law require aggregation of donations to parties by an individual donor between $500 and $1 499. If the total donations to one recipient exceeds $1 500 in aggregate, COG said the details of these donations must be disclosed. COG gave candidates lower amounts to comply with than political parties - $100 to $499, and $500 respectively.

Arguments about the administrative burden and loss of privacy were discounted by COG as being outweighed by the need for transparency and the protection of the public interest in the information which disclosure provides.

The Liberal Party had recommended at 8.10 of the Report, that the $1 500 reporting figure should be raised to $10 000. The AEC pointed out that making a series of donations just under the disclosure level could see this figure escalate to $90 000. The increase in the threshold level recommended by the Liberal Party would raise the amount of donated money which could be unreported, according to the AEC, from the current amount of $13 491, to $89 991.[20]

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20 Submission pS1496

The Majority Report's suggestion (at 8.12) that a sum of $90 000 spread over the national branches of a party is 'hardly likely to engender corruption' is profoundly disturbing. This not only suggests that $90 000 is not a significant sum of money, which it is, but appears to suggest that the major parties do not see the obvious problem with money being received in this fashion.

However the Committee have evidently understood the dangers of this position and have therefore recommended in Recommendation 55 a figure of $5 000, not $10 000. That still translates on the AEC example to $45 000 a year. It could even translate to $135 000 spread over a three year election cycle.

It is obvious that donating a series of below-disclosure and therefore unreportable sums of money to numerous party offices, in order to avoid public disclosure, would be an attractive option for someone who wished to buy influence. The inconvenience of doing so would be minor.

The effect of the $5 000, translating to $45 000 a year, or $135 000 a cycle, may be to provide a loophole whereby the vast majority of donors could escape scrutiny. Such a result would effectively collapse the purpose of the Act.

Section 314AC(1) of the *Electoral Act* requires disclosure of donations totalling $1 500 or more. Section 314AC(2) sets the threshold at $500 for individual amounts received. Section 305B(1) sets donor disclosure at $1 500. These are all new provisions which have operated for only one Federal election. They do not deserve review at this time. The Majority Report's recommendation to amend these sections would pre-empt an accurate determination of their effect.

Recommendation 9.1

The Australian Democrats oppose and reject recommendations 55 and 56 of the Majority Report.

Recommendation 9.2

That the Recommendation 128 of the WA Commission on Government be considered in amending the reporting thresholds spelt out in the Commonwealth *Electoral Act*.

Disclosure by Donors

In Recommendation 57 the Majority Committee recommend that Section 305B(1) be amended to increase from $1 500 to $10 000 the amount above which a donor to a political party must furnish a return for the financial year. The Australian Democrats believe that an increase of the threshold from $1,500 to $10,000 would be untenable and contrary to the public interest. The WA Inc Royal Commission's findings were that any political party that wants to receive donations and gifts under a veil of secrecy must only invite suspicion.

Recommendation 9.3

The Australian Democrats oppose and reject recommendation 57 of the Majority Report.

Disclosure by donors also goes to the heart of disclosure of the true source of a donation. COG dealt with these matters in its Recommendations 129, 130, and 131. Among other matters, these recommendations required the true source of any donation over $1 000 to be disclosed; that a maximum of $5 000 in anonymous donations can be received a year; and that Trusts and Foundations must disclose the true source of funds on pain of forfeiture.

These and other recommendations by COG should be heeded in developing further amendments to the disclosures and funding provisions in the Commonwealth *Electoral Act.*

It is also most desirable to remove any lingering doubts concerning Trusts. One of the roles they play in political donations is as a screening device, hiding the true source of donations. There are legislative precedents for requiring disclosure by such bodies. The hidden donations from trusts and foundations, sometimes with a foreign source, are of particular concern, and any loophole must be closed.

Recommendation 9.4

Political parties which receive donations from Trusts or Foundations must be obliged to return the money, or forfeit the money donated unless the following is disclosed:

- **a declaration of beneficial and ultimate control of the trust estate, including by 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 which 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; and**
- **any changes during the donations year in relation to the information provided above.**

Annual and Election Returns

Requiring the disclosure of electoral expenditure by political parties provides a valuable cross check on donations received. The double reporting requirement ensures that parties do not expend more money than they report to receive by donation and other legitimate means. In its

Recommendation 135,[21] COG recommended that post electoral returns of electoral expenditure be required. A distinction was therefore made between election returns and annual returns.

Recommendation 9.5

The Australian Democrats will only support Recommendations 58 and 59 if there is no significant loss or diminution in transparency and in detailed disclosure requirements.

Total Expenditure Report

Recommendation 60 may be sensible. However those business transactions with third parties who are also above-threshold donors should be disclosed.

Recommendation 9.6

The Australian Democrats will only support Recommendation 60 if there is no significant loss or diminution in transparency and in detailed disclosure requirements.

Tax Deductibility of Donations

The Majority Committee proposes lifting tax deductibility for donations to a political party from $100 to $1 500.

The principle of tax deductions for donations to non profit organisations is well established - to community, sporting, religious, cultural, charitable, and political groups for instance. However on equitable and consistency grounds it is vital that common rules apply to donations to all these groups. The question of tax deductibility for donations to political parties should not be separated in my view, from rules which should be common to all non profit organisations in the community as a whole. Political parties should not be treated differently from other community organisations with regard to tax deductibility.

Unless a stronger and more equitable case is presented for this recommendation I would propose opposing it. The Australian Democrats can only consider supporting Recommendation 61, if such a tax provision is available to all relevant community organisations.

The Committee correctly indicates that it is desirable to increase small and medium donations and decrease political parties reliance on large donations. An increase in small donations may well result from Recommendation 61, but I doubt very much, given the existing system, that the reliance on large donations will diminish at all.

21 Ibid

Recommendation 9.7

That tax deductibility for donations to Political Parties and Independents mirror those available to Community organisations as a whole.

Election Funding

With regard to Recommendation 63, as spelt out in Section 3 of this Minority Report the Australian Democrats do not support voluntary voting, which I believe is behind this recommendation. Further a case has not been sufficiently advanced at this stage, to justify this recommendation.

Annual Returns by Commonwealth Departments

The Australian Democrats will only support Recommendation 64 if those provisions remain applicable until actually replaced in more appropriate legislation.

Recommendation 9.8

That Section 311A be given a sunset clause, operable once it is replaced in other legislation.

Other Disclosure of Donations

West Australia has recently enacted the *Labour Relations Legislation Amendment Act 1997.* This Act requires a disclosure regime on political donations which is selective and discriminatory, in that it only applies to Trade Unions. This legislation is in defiance of the COG Recommendation 134 which said:

> There should be no restrictions placed on political donations from trade unions or corporations provided that the donations meet the requirements of disclosure contained in previous recommendations. (12.12.5)

It is my intention to explore methods of applying that same disclosure regime to all organisations and individuals that make political donations in any State which has such discriminatory legislation.

Recommendation 9.9

That where any State or Territory requires disclosure of political donations by just one sector of the Community, then all other organisations and companies should also have to comply with this requirement in that State.

10. Chapter Nine - Other Matters (p107)

The Australian Electoral Commission

The Divisional Office Structure

At 9.19 the Committee indicated that it had had consultations with the Australian National Audit Office, (ANAO), which has initiated a performance audit of the Australian Electoral Commission (AEC).

This section of the Committee Report outlines the stress the AEC is under as a result of budgetary and organisational constraints.

It is self evident that the AEC and State Electoral Commissions have many functions in common. The question is whether these responsibilities could be shared. At the Committee's meeting with the ANAO, I asked the ANAO to examine practical ways in which Federal and State Electoral Commissions could consider joint efficiencies, to the benefit of both.

Recommendation 10.1

That the ANAO in its performance audit of the AEC examine practical ways in which Federal and State Electoral Commissions could consider joint efficiencies to the benefit of both.

Four Year Terms

Fixed Terms

The Committee took evidence concerning four year terms for the House of Representatives. However the more immediate necessity is fixed terms.

The Senate has fixed terms. The Australian Democrats believe that so too should the HoR. Except for extraordinary circumstances election dates should be preset for the HoR by legislation. Section 28 of the Australian Constitution gives the Head-of State the power to 'sooner dissolve'.[22] This constitutional prerogative would obviously have to be retained, but legislation should end the Prime Minister's prerogative of asking, (in practice, requiring), the Head-of-State to dissolve Parliament.

Snap and early elections are called for personal and party advantage, arbitrarily, sometimes capriciously, and always on a partisan basis. Elections should be held on a predetermined date. That allows for certainty, stability, and responsibility by both government and opposition, allows for sound party and independent preparation, and allows for fair competition.

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22 "28. Every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but may be sooner dissolved by the Governor-General."

Recommendation 10.2

That the dates of elections be fixed and preset by legislation.

By-Elections

By-elections affect the House of Representatives, not the Senate, because premature vacancies in the Senate are filled by appointment. By-elections are costly, costing $285 000 according to the AEC.[23] They should not be initiated lightly or selfishly. Voters have a right to believe that the Representative they vote for will see out his or her full term.

After the Royal Commission into WA Inc the Western Australian Government appointed the Commission on Government (COG). COG made the following recommendation concerning by-elections:[24]

> Recommendation 50 Premature Vacancies
>
> Legislation should be introduced to impose a financial penalty on members of parliament who resign without due cause. This penalty should be taken from a member's superannuation fund or other entitlements. (8.3.13.5)

I concur with COG's proposal. I do not accept the AEC's fears that it would be difficult to determine the matter of whether resignations had 'due cause'.

Recommendation 10.3

That legislation should be introduced to impose a financial penalty on members of the House of Representatives who resign without due cause.

Senator Andrew Murray

June 1997

23 Submission ppS 1460-1 (AEC)

24 Commission on Government: Report No 1: August 1995

APPENDIX 1

RESOLUTION OF APPOINTMENT

(1) That a Joint Standing Committee on Electoral Matters be appointed to inquire into and report on such matters relating to electoral laws and practices and their administration as may be referred to it by either House of the Parliament or a Minister.

(2) That the committee consist of 10 members, 3 Members of the House of Representatives to be nominated by the Government Whip or Whips, 2 Members of the House of Representatives to be nominated by the Opposition Whip or Whips or by any independent Member, 2 Senators to be nominated by the Leader of the Government in the Senate, 1 Senator to be nominated by the Leader of the Opposition in the Senate and 2 Senators to be nominated by any minority group or groups or independent Senator or independent Senators.

(3) That every nomination of a member of the committee be forthwith notified in writing to the President of the Senate and the Speaker of the House of Representatives.

(4) That the members of the committee hold office as a joint standing committee until the House of Representatives is dissolved or expires by effluxion of time.

(5) That the committee elect a Government member as its chair.

(6) That the committee elect a deputy chair who shall act as chair of the committee at any time when the chair is not present at a meeting of the committee and at any time when the chair and deputy chair are not present at a meeting of the committee the members present shall elect another member to act as chair at that meeting.

(7) That, in the event of an equality of voting, the chair, or the deputy chair when acting as chair, shall have a casting vote.

(8) That 3 members of the committee constitute a quorum of the committee, provided that in a deliberative meeting the quorum shall include 1 member of either House of the Government parties and 1 member of either House of the non-Government parties.

(9) That the committee have power to appoint subcommittees consisting of 3 or more of its members and to refer to any subcommittee any matter which the committee is empowered to examine.

(10) That the committee appoint the chair of each subcommittee who shall have a casting vote only and at any time when the chair of a subcommittee is not present at a meeting of the subcommittee the members of the subcommittee present shall elect another member of that subcommittee to act as chair at that meeting.

(11) That the quorum of a subcommittee be 2 members of that subcommittee, provided that in a deliberative meeting the quorum shall comprise 1 member of either House of the Government parties and 1 member of either House of the non-Government parties.

(12) That members of the committee who are not members of a subcommittee may participate in the proceedings of that subcommittee but shall not vote, move any motion or be counted for the purpose of a quorum.

(13) That the committee or any subcommittee have power to send for persons, papers and records.

(14) That the committee or any subcommittee have power to move from place to place.

(15) That a subcommittee have power to adjourn from time to time and to sit during any adjournment of the Senate and the House of Representatives.

(16) That the committee have leave to report from time to time.

(17) That the committee or any subcommittee have power to consider and make use of:

(a) submissions lodged with the Clerk of the Senate in response to public advertisements placed in accordance with the resolution of the Senate of 26 November 1981 relating to a proposed Joint Select Committee on the Electoral System, and

(b) the evidence and records of the Joint Committees on Electoral Reform and Electoral Matters appointed during previous Parliaments.

(18) That the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

APPENDIX 2

LIST OF SUBMISSIONS

No.	From
1	Reid Federal Electorate Council of the Australian Labor Party
2	Mr Kelvin Thomson MHR
3	Mr C G W Hughes
4	Mr Neil Forbes
5	Council of the Shire of Murray
6	Mr Frank Ashdown
7	Mr Michael Doyle
8	Bathurst City Council
9	Mr Ross Parkinson
10	Mr Brian Cox OBE MVO
11	Mr P J Boyle
12	S S Gilchrist
13	Mr David Pullen
14	National Party of Australia - W.A.
15	Mr Jim Coates
16	Mr John Bombardieri
17	Mr Mark Spill
18	Mr Robert Cooper
19	Dr David Blest
20	Mr Phillip Neuss
21	Ms Coral Richards
22	Kooyong Electorate Branch of the Australian Greens

23	Mr Allan Viney
24	Ms Clover Moore MP
25	Queensland Branch of the International Commission of Jurists
26	Emeritus Professor Colin Hughes
27	Mr A J Betts
28	Mr Kieran Murphy
29	Dr Amy McGrath OAM
30	Australian Electoral Commission
31	Mr I H Farrow
32	Miss Elizabeth McDonald
33	Australian Private Hospitals Association Limited
34	Mr Robert Bath
35	Mr Peter Crayson
36	Dr David Blair PhD
37	Mr Wilson Tuckey MP
38	Liberal Party, Cheltenham Branch
39	ERS Consultancies
40	Liberal Party, Dundas Branch
41	Mr Bert Joy
42	Mr Paul Filing MP
43	Mr Peter Downes
44	Grey Power SA (inc)
45	Senator Michael Baume
46	Mrs Joanna Gash MP
47	The Hon Bob McMullan MP
48	Mr Len Johnston
49	Mrs Diana Moloney

50	Liberal Party, Gosford Branch
51	Mr Bruce MacCarthy MP
52	Mr G C Johnston
53	Ms Trish Worth MP
54	Senator the Hon Grant Tambling
55	Australian Labor Party, Kooyong Campaign Committee
56	Mr Peter Andren MP
57	Mr Alan Cadman MP
58	Women Into Politics Incorporated
59	Mr Antony Green
60	Mrs Robin Alcock
61	Mr Tony Robinson
62	Australian Labor Party, National Secretariat
63	Mr Christopher King
64	Dr Derek Freeman AM
65	The Liberal Party of Australia, Federal Secretariat
66	Mrs Ricky Johnston MP
67	Mr Eoin Cameron MP
68	Mr Don Randall JP MP
69	Dr Amy McGrath OAM (Supplementary Submission)
70	Dr Amy McGrath OAM (Supplementary Submission)
71	The Hon Nick Dondas AM MP
72	Mr Allan Rocher MP
73	Queensland Branch of the International Commission of Jurists (Supplementary Submission)
74	Professor Joan Rydon
75	Dr Amy McGrath OAM (Supplementary Submission)

76	Northwest Members of the Western Australian Parliamentary Labor Party
77	Australian Electoral Commission (Supplementary Submission)
78	Australian Electoral Commission (Supplementary Submission)
79	Australian Electoral Commission (Supplementary Submission)
80	Australian Electoral Commission (Supplementary Submission)
81	Mr Donald Campbell
82	Mr Mark Rea
83	Dr Amy McGrath OAM (Supplementary Submission)
84	Australian Electoral Commission (Supplementary Submission)
85	National Party of Australia - NSW
86	Mr Graeme Campbell MP
87	(Confidential)
88	Mr Bob Patching
89	Mr Graham Smith
90	Australian Electoral Commission (Supplementary Submission)
91	Senator Julian McGauran
92	Dr Amy McGrath OAM (Supplementary Submission)
93	Australia Post
94	Mr Daryl Melham MP
95	Australian Electoral Commission (Supplementary Submission)
96	Australian Electoral Commission (Supplementary Submission)
97	Australian Electoral Commission (Supplementary Submission)
98	Australian Electoral Commission (Supplementary Submission)
99	Australian Electoral Commission (Supplementary Submission)
100	Australian Electoral Commission (Supplementary Submission)
101	Mr Alan Jeffrey
102	Privacy Commissioner, Human Rights Australia

103	Mr Bruce Martin
104	Dr Amy McGrath OAM (Supplementary Submission)
105	Proportional Representation Society of Australia
106	Dr Amy McGrath OAM (Supplementary Submission)
107	Mr Brian Cox OBE MVO (Supplementary Submission)
108	Australian Electoral Commission (Supplementary Submission)
109	Australian Electoral Commission (Supplementary Submission)
110	Mr G C Johnston (Supplementary Submission)
111	Australian Federal Police
112	Australia Post (Supplementary Submission)
113	Ms Maggie Hickey MLA
114	Dr Amy McGrath OAM (Supplementary Submission)
115	Dr Amy McGrath OAM (Supplementary Submission)
116	Dr Amy McGrath OAM (Supplementary Submission)
117	The Government of Norfolk Island
118	Australian Electoral Commission (Supplementary Submission)
119	Mr Bob Patching (Supplementary Submission)
120	Mr Bob Patching (Supplementary Submission)
121	The Electoral Reform Society of South Australia
122	Mr Edward Patridge
123	Commonwealth Director of Public Prosecutions
124	J W Romanowski
125	Dr Amy McGrath OAM (Supplementary Submission)
126	Australian Electoral Commission (Supplementary Submission)
127	Ms Maggie Hickey MLA (Supplementary Submission)
128	Australian Electoral Commission (Supplementary Submission)
129	Australian Electoral Commission (Supplementary Submission)

130 Mr G C Johnston (Supplementary Submission)

131 Mr Bob Patching (Supplementary Submission)

132 Attorney-General's Department

133 Australian Electoral Commission (Supplementary Submission)

134 Mr John Guest

135 Australian Electoral Commission (Supplementary Submission)

APPENDIX 3

LIST OF EXHIBITS

No.	Description
1.	Mr Graeme Orr, "The Choice Not to Choose: Commonwealth Electoral Law and the Withholding of Preferences" (paper delivered to the Law and Society Conference in December 1995; being reviewed for publication by the *Monash Law Review* as at July 1996). Provided with submission no.25 from the Queensland Branch of the International Commission of Jurists. Accepted as an exhibit 5 August 1996.
2.	Australian Electoral Commission, March 1996 Newspoll "Post-Election Study". Requested by the Committee during the 15 August 1996 public hearing. Accepted as an exhibit 20 August 1996.
3.	Australian Labor Party, "Nationality Requirements for Candidates". Tabled and accepted as an exhibit at the 13 September 1996 public hearing.
4.	Mr Allan Viney, "Reforming of Australian Electoral Procedures by the Introduction of a National 'Voters Register'". Tabled and accepted as an exhibit at the 23 September 1996 public hearing.
5.	Women Into Politics Incorporated, papers from a 19 September 1996 national symposium on political equality for women and a 1 May 1995 letter from Women Into Politics to Prime Minister Paul Keating. Tabled and accepted as an exhibit at the 23 September 1996 public hearing.
6.	Electoral Commissioner of Victoria, "Pre-poll Voting at the 30 March 1996 Victorian State Election". Requested by the Committee on 22 August 1996. Accepted as an exhibit 8 October 1996.

7. Chief Electoral Officer for the State of Tasmania, the *Tasmanian Electoral Amendment Bill 1996* and related documents.

   Accepted as an exhibit 8 October 1996.

8. Mr Don Randall JP MP, press articles related to the Albert Langer cases ("Exhausted Preferential Votes", *The Age* 5 March 1996; "'Both Parties Last' Vote Jumps Since Last Election", *The Australian* 31 January 1996; "How to Vote for Neither!", advertisement in *The Australian* 31 January 1996).

   Tabled and accepted as an exhibit at the 9 October 1996 public hearing.

9. Mr Don Randall JP MP, extract from AEC *Scrutineers Handbook: Election 96.*

   Tabled and accepted as an exhibit at the 9 October 1996 public hearing.

10. Mr Paul Filing MP, February and March 1996 *Moore Report* and a related facsimile.

    Tabled and accepted as an exhibit at the 9 October 1996 public hearing.

11. Mr Wilson Tuckey MP, "Payout for Pollies" (*The Sunday Times*, 15 July 1996).

    Tabled and accepted as an exhibit at the 9 October 1996 public hearing.

12. Australian Electoral Commission, postal and declaration vote envelopes.

    Tabled and accepted as an exhibit at the 25 October 1996 public hearing.

13. Mr Graeme Orr, "Ballotless and Behind Bars: Australian Electoral Law and the Denial of the Vote to Prisoners" (paper delivered to the 1996 ASLP Annual Conference) and Mirjan R. Damaska, "Consequences of Conviction in Various Countries" (in Radzinowicz and Wolfgang eds, *Crime and Justice, Volume 3: The Criminal in Confinement*, 1971, Basic Books, NY).

    Requested by the Committee during the 4 October 1996 public hearing. Accepted as an exhibit 29 October 1996.

14. Australian Electoral Commission, 1990 and 1993 staff opinion surveys.

Requested by the Committee on 16 October 1996. Accepted as an exhibit 29 October 1996.

15. Australian Electoral Commission, advice from the Attorney-General's Department and the Director of Public Prosecutions on the imprisonment of non-voters.

Tabled and accepted as an exhibit at the 18 November 1996 public hearing.

APPENDIX 4

LIST OF HEARINGS AND WITNESSES

Canberra, Thursday 15 August 1996

Australian Electoral Commission:

Mr Bill Gray AM, Electoral Commissioner

Dr Robin Bell, Deputy Electoral Commissioner

Mr Paul Dacey, Assistant Commissioner, Development and Research

Ms Peta Dawson, Director, Litigation

Mr Michael Maley, Director, Research and International Services

Dr David Muffet, Australian Electoral Officer for Victoria

Mr Trevor Willson, Assistant Commissioner, Information and Education

Canberra, Friday 13 September 1996

The Hon Nick Dondas AM MP, Federal Member for the Northern Territory

Australian Labor Party:

Mr Gary Gray, National Secretary

Liberal Party of Australia:

Mr Lynton Crosby, Deputy Federal Director

Mr Dean Smith, Manager, Parliamentary and Policy

Sydney, Monday 23 September 1996

Dr Amy McGrath OAM

Mr Allan Viney

Dr Derek Freeman AM

Mr Bruce MacCarthy MP, State Member for Strathfield

Women Into Politics Incorporated:

Ms Barbara McGarity, President

Ms Joan Bielski, Secretary

Brisbane, Friday 4 October 1996

Mr Robert Patching

Mr Graham Smith

International Commission of Jurists, Queensland Branch:

Mr Graeme Orr, Acting Secretary

Mr George Johnson

Emeritus Professor Colin Hughes

Canberra, Wednesday 9 October 1996

Mr Don Randall JP MP, Federal Member for Swan

Mrs Joanna Gash MP, Federal Member for Gilmore

Mr Paul Filing MP, Federal Member for Moore

Mr Wilson Tuckey MP, Federal Member for O'Connor

Canberra, Friday 25 October 1996

The Hon Bob McMullan MP, Federal Member for Canberra

Northwest Members of the Western Australian Parliamentary Labor Party:

Mr Fred Riebeling MP, State Member for Ashburton

Australian Electoral Commission:

Mr Bill Gray AM, Electoral Commissioner

Dr Robin Bell, Deputy Electoral Commissioner

Mr Paul Dacey, Assistant Commissioner, Development and Research

Mr David Kerslake, Assistant Commissioner, Industrial Elections, Funding and Disclosure

Mr Robert Longland, Australian Electoral Officer for Queensland

Mr Michael Maley, Director, Research and International Services

Mr Timothy Pickering, Assistant Commissioner, Information Technology

Mr Trevor Willson, Assistant Commissioner, Information and Education

Canberra, Monday 18 November 1996

Mr Daryl Melham MP, Federal Member for Banks

Australian Electoral Commission:

Dr Robin Bell, Deputy Electoral Commissioner

Mr Paul Dacey, Assistant Commissioner, Development and Research

Ms Peta Dawson, Director, Litigation

Mr Michael Maley, Director, Research and International Services

Mr Tim Pickering, Assistant Commissioner, Information Technology