

## Enabling the franchise

- 3.1 Australia has a proud history of ensuring access to the franchise for those who are entitled to have their names included on the electoral rolls for federal, state and local government elections.
- 3.2 It is incumbent upon all governments to continue this tradition, to both welcome new electors and to ensure that electoral legislation does not create unreasonable barriers for those who qualify for enrolment and voting and who, rightfully, expect to be able to exercise their franchise at elections and referenda.
- 3.3 With these traditions and aims firmly in mind, the committee sought to examine how the enrolment provisions of the *Commonwealth Electoral Act 1918* applied at the 2007 election, to examine whether the appropriate balance existed between enabling the franchise for those who are qualified to exercise it, and ensuring the continued integrity of the electoral roll.
- 3.4 In doing so, the threshold issue for consideration by the committee is whether changes to enrolment and voting provisions of the Commonwealth Electoral Act have had the effect of enabling or restricting the franchise, and if they were found to be restrictive, whether those restrictions were more than offset by the achievement of greater electoral 'integrity' in the lead up to and at the 2007 election.
- 3.5 To ensure that the changes were viewed in an appropriate context, the committee compared the 2007 election experience in so far as it related to enrolment and voting to federal elections held since 1993.
- 3.6 The committee considered another important issue relating to enfranchisement, which, despite electors carrying out all of the requirements required by the Commonwealth Electoral Act, results in the postal votes lodged by certain electors being excluded from the count.

- 3.7 The particular circumstances relating to these postal votes have been considered by former Joint Standing Committees on Electoral Matters election inquiries, with most recently, the 2004 inquiry recommending that changes be made to enhance the franchise for these electors.

## Background

- 3.8 Australia's inclusive entitlement to the franchise has been a feature of federal elections since 18 June 1962, when all Aboriginal people became entitled to enrol and vote at federal elections and referenda.<sup>1</sup> At this time Aboriginal people were able to take up the franchise alongside those eligible British subjects who were aged 21 years or more.
- 3.9 In 1973 the qualifying age for enrolment, voting and candidature dropped from 21 years to 18 years. The 18 years of age qualification for enrolment and voting has remained unchanged since that time.
- 3.10 Between 1973 and 1983, British Subjects resident in Australia for six months or more, who were 18 years of age or more were entitled to enrol.
- 3.11 In 1984, Australian citizenship became the qualification for enrolment and voting. Those British subjects who were on the roll immediately before 26 January 1984 retain an entitlement to enrolment and voting to this day.<sup>2</sup>
- 3.12 The enrolment franchise was extended in 1983 when the concept of provisional enrolment was introduced into the Commonwealth Electoral Act. Provisional enrolment allowed for persons who had reached 17 years of age and who would be otherwise entitled to enrolment if they were 18 years of age, to have their names placed on the electoral roll, with the voting franchise not granted until they reached 18.<sup>3</sup>
- 3.13 A further extension in 1992 saw applicants for Australian citizenship also gain an entitlement to provisional enrolment. Provisional enrolment for applicants for citizenship allowed those persons who had made an application to become Australian citizens, who would otherwise be entitled to enrolment, to have their names added to the electoral roll, with the voting franchise granted when they received a certificate of Australian citizenship.

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1 Australian Electoral Commission, *Electoral pocketbook: election 2007* (2009), p 30.

2 *Commonwealth Electoral Act 1918*, s 93.

3 *Commonwealth Electoral Act 1918*, s 100.

- 3.14 Other amendments to the Commonwealth Electoral Act in 1992 saw the enrolment and voting franchise extended to qualified Norfolk Islanders. Those Norfolk Islanders who were one of the people of a State for the purposes of sections 7 and 24 of the Constitution, who resided in Norfolk Island and would be qualified for enrolment if they lived in a subdivision in Australia, became entitled to enrolment.<sup>4</sup> Those Norfolk Islanders, who were not people of a state for the purposes of sections 7 and 24 of the Constitution, became eligible to enrol in a subdivision of a one-Territory Division.<sup>5</sup>
- 3.15 With some minor exceptions including provisions relating to Norfolk Island electors and itinerant electors, enrolment for the purposes of House of Representatives elections is generally granted on the basis that an otherwise qualified elector has resided at an address within a Commonwealth electoral division for one month, and, in respect of Senate elections, that address is located within a particular state or territory.
- 3.16 In general terms the franchise has not been extended to Australian citizens residing overseas unless they have an intention to return to live in Australia within a specified time. Despite representations by Australian citizens and advocacy group representing citizens living permanently overseas, Parliament has historically considered Australian residence as an important precondition for enrolment and voting.
- 3.17 However, enrolled voters, who leave Australia, may register as 'eligible overseas electors' providing they intend to return within a period (currently six years) provided for in the Commonwealth Electoral Act. Eligible overseas electors are entitled to remain enrolled and vote in respect of the address at which they were enrolled prior to leaving Australia.<sup>6</sup>
- 3.18 Persons who have ceased to reside in Australia, but who are not enrolled may also apply for enrolment from overseas providing they have the intention to return to reside in Australia within six years.<sup>7</sup>
- 3.19 Persons resident in Australia, who do not qualify for enrolment because they do not reside at any particular address long enough to become eligible for enrolment, are able to enrol as itinerant electors. Itinerant electors retain an entitlement for the electoral division for which they were

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4 *Commonwealth Electoral Act 1918*, s 95AA.

5 Those Norfolk Islanders may enrol in either the division of Canberra (ACT) or Solomon (NT).

6 *Commonwealth Electoral Act 1918*, s 94.

7 *Commonwealth Electoral Act 1918*, ss 94A and 95.

last enrolled or are granted entitlement for another electoral division if they have never been enrolled.<sup>8</sup>

- 3.20 The Australian Electoral Commission (AEC) maintains the electoral rolls for Commonwealth elections and referenda, and in line with 'Joint Rolls Agreements' maintains rolls for many state, territory and local government elections.
- 3.21 Electors who are entitled to be enrolled for any subdivision<sup>9</sup> or who change address must notify the AEC once they become so entitled in order that the electoral rolls may be updated to reflect the changes.<sup>10</sup>
- 3.22 It has historically been the case that some electors neglect to update their electoral roll details in a timely manner. Over time, combinations of different approaches have been used to facilitate updating the electoral roll. These have included:
- habitation reviews - during which the AEC visits residences to update enrolment details;
  - mail reviews - where the AEC writes to residents and addresses seeking updated electoral roll information; and
  - advertising - which is designed to raise awareness of the need to update enrolment details.
- 3.23 For all elections and referenda from 1984 to 2004, electors who were not enrolled, and those who were enrolled but who had since changed address, were provided with a seven day period of grace following the issue of the writs for an election. This seven day period has been traditionally known as the 'close of rolls' period.
- 3.24 Additions to the roll and enrolment transfers notified during the close of rolls period were actioned by the AEC and those changes were reflected in the electoral rolls used at the subsequent election.
- 3.25 In June 2006 the Commonwealth Electoral Act was amended to provide that the roll would close for new enrolments at 8.00 pm on the day that the writ was issued for an election, with a further three working days provided for the notification of changes to existing enrolments.

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8 *Commonwealth Electoral Act 1918*, s 96.

9 *Commonwealth Electoral Act 1918*, s79 - Note that an electoral division may be divided into subdivisions and where that is the case, s 82 provides that there shall be a separate Roll for each subdivision.

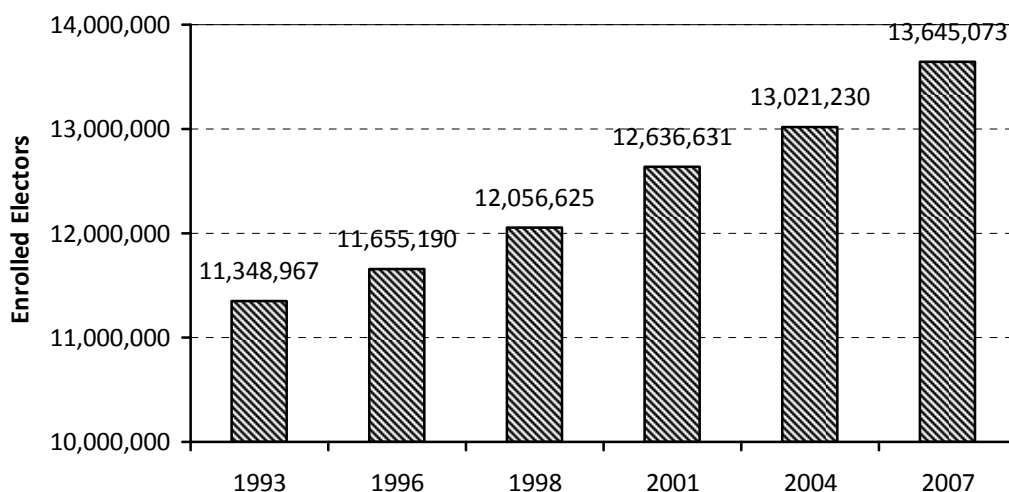
10 *Commonwealth Electoral Act 1918*, s 101.

- 3.26 Collectively, the various extensions of the enrolment franchise outlined above, along with attempts by the AEC to encourage enrolment and participation by eligible electors have led to high levels of ongoing enrolment.
- 3.27 Notwithstanding these factors, an imminent election has historically proved to be the best and most effective catalyst for encouraging electors to notify changes to electoral enrolment. This has traditionally resulted in enrolment transactions increasing dramatically in the lead up to an election.

### Close of rolls enrolment

- 3.28 The electoral roll continues to grow for each election as is evident in figure 3.1 which shows the close of rolls enrolment for each election since 1993.
- 3.29 As noted in chapter 2, changed close of rolls arrangements applied for the 2007 election as a result of amendments to the Commonwealth Electoral Act recommended by the then Joint Standing Committee on Electoral Matters following the 2004 federal election and adopted by the government of the day.<sup>11</sup>

Figure 3.1 Election and close of rolls enrolment, by jurisdiction, 1993 to 2007 elections



Source Appendix C, table C.8.

11 Joint Standing Committee on Electoral Matters, *The 2004 election: Report of the inquiry into the conduct of the 2004 federal election and matters related thereto* (2005), Commonwealth of Australia, p 36.

- 3.30 These changes, along with a number of other changes to enrolment and voting provisions came into effect following the passage of the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006*, which received royal assent on 22 June 2006.
- 3.31 Prior to those amendments, section 155 of the Commonwealth Electoral Act provided that the date for the close of the rolls was seven days after the date of the writ.
- 3.32 Following the 2006 amendments section 155 provides:
- (1) The date fixed for the close of the Rolls is the third working day after the date of the writ.
- Note: However, generally names are not added to or removed from the Rolls after the date of the writ.
- (2) In this section:
    - working day* means any day except:
      - (a) a Saturday or a Sunday; or
      - (b) a day that is a public holiday in any State or Territory.
- 3.33 The amendments now make it possible for the electoral roll to close on the day of issue of the writ for an election in respect of new enrolments, whereas no further changes to enrolment details for electors already on the electoral roll would be permitted after the third working day after the issue of the writ.
- 3.34 Two matters are especially relevant when considering the changes made to shorten the close of rolls period; firstly, there is no fixed term for the House of Representatives or the Senate. Elections can be, and sometimes are announced unexpectedly, thereby negating any beneficial or mitigating effects which might be gained where electors know the likely date of an election and update their enrolment details in a timely manner accordingly.
- 3.35 Secondly, there has been no suggestion that the AEC is unable to process any enrolment transactions received during lengthier close of rolls periods in the past, and the Commonwealth makes special provisions allowing for the cross-divisional processing of enrolments in order to allow it to do so
- 3.36 The AEC noted that 'there are now two deadlines relevant to the close of rolls process'<sup>12</sup> and provided the following information relating to the close of rolls at the 2007 election:
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12 Australian Electoral Commission, submission 169, p 6.

The writs for the 2007 election were issued on Wednesday 17 October 2007, with the electoral roll closing at 8p.m. on Tuesday 23 October 2007. The CEA specifies the close of rolls deadline as being on the third 'working day' after the date of the issue of the writs. As a public holiday (Show Day on Flinders Island in Tasmania) fell on Friday 19 October 2007, that day was not a 'working day' within the meaning of the CEA, and consequently the close of rolls deadline was Tuesday 23 October 2007 rather than Monday 22 October 2007. For the 2007 election, the close of rolls deadlines were therefore:

- 8p.m. on Wednesday 17 October 2007 for those who were enrolling for the first time or re-enrolling after a period of non-enrolment; and
- 8p.m. on Tuesday 23 October 2007 for those people covered by the longer deadline, namely:
  - ⇒ people already on the roll whose details needed to be updated;
  - ⇒ eligible persons who are not enrolled but who will turn 18 years old between the issue of the writs and the end of polling day; and
  - ⇒ eligible persons who are not enrolled but who will be granted Australian citizenship between the issue of the writs and polling day.<sup>13</sup>

3.37 The AEC commented on the timing of close of rolls for the 2004 and 2007 elections, submitting that:

First, it needs to be noted that in 2004 the election date was announced on Sunday 29 August 2004 with the rolls closing nine days later, on Tuesday 7 September 2004. In 2007 the election was announced on Sunday 14 October 2007 with enrolment deadlines ... of Wednesday 17 October 2007 and Tuesday 23 October 2007. The period between the announcement of the election date and the deadline for updating existing enrolment details was therefore the same in 2004 and 2007.<sup>14</sup>

3.38 The delay between announcement of the election and the issue of the writ in 2007 effectively gave new enrollees a period of grace of some four days in which to enrol. Such a period would not be provided if the announcement of an election occurred on the same day as the writ is issued.

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13 Australian Electoral Commission, submission 169, pp 6-7.

14 Australian Electoral Commission, submission 169, p 8.

- 3.39 Some inquiry participants argued that the changed close of rolls arrangements worked well.
- 3.40 The Festival of Light Australia noted that the advertising and publicity given to the changes assisted to increase the enrolment of 18 year olds and recommended that the changed close of rolls arrangements be retained:

It appears as if the advertising campaign conducted by the AEC, as well as the publicity about the closure of the rolls on the day the writs were issued generated by community groups, including those opposed to this change, resulted in a more successful enrolment of 18 year olds than the old system with its seven day grace period for enrolments after the writs were issued.<sup>15</sup>

- 3.41 The Liberal Party of Australia argued for retention of the new arrangements suggesting that the changes enhanced the integrity of the roll:

The improvements made to close of roll arrangements by legislation in the last Parliament (so that new enrollees have until the day of the issue of the writ to enrol and current enrollees have until three working days later to change their details) were an important change to assist in enhancing the integrity of the electoral roll. We believe that these changes worked well in 2007 and that there is no reason to change the timings of the close of roll.<sup>16</sup>

- 3.42 On the other hand, some participants were critical of the changes. The Human Rights and Equal Opportunity Commissioner, Mr Graeme Innes noted that:

The commission is concerned that early closure of the electoral rolls may lead to the disenfranchisement of many Australians – particularly those who are marginalised, such as young people, new Australian citizens, those in rural and remote areas, homeless and itinerant people, Indigenous people and people with a mental illness or an intellectual disability – due to access difficulties. Thus, the commission recommends that the 2007 amendments which shortened the close of rolls period be repealed and the period between the date of the writ and close of rolls be extended to seven days to allow enrolment activity during this time.<sup>17</sup>

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15 Festival of Light Australia, submission 67, p 7.

16 Liberal Party of Australia, submission 156, p 3.

17 Innes G, Human Rights and Disability Discrimination Commissioner, Human Rights and Equal Opportunities Commission, transcript, 23 July 2008, pp 27–28.



- 3.43 RMIT University academic, Dr Kathy Edwards questioned the rationale upon which the changes to the close of roll were based, noting in part:

Chapter Two of the Report of the JSCEM Inquiry following the 2004 Federal Election highlights the integrity of the Commonwealth of Australia Electoral Roll as an issue of prime importance. The abovementioned recommendations and resultant legislative changes were made on the basis of concerns regarding the potential for electors to subvert democratic processes by enrolling strategically in marginal seats after the calling of an election. These concerns were voiced primarily by the Liberal Party of Australia, The Nationals and The Festival of Light. Of particular concern to these organizations, and to the Committee, was the high volume of new enrolments and changes of address that the AEC was required to deal with during this period. The Committee considered that this, combined with the available window of opportunity for (re)enrolment, might harm the integrity of the electoral roll by preventing the normally rigorous attention paid by the AEC to the veracity of enrolment forms.

Early closing of the Electoral Roll was opposed by a range of community groups representing disadvantaged and rural Australians. It was argued that early closing would result in the disenfranchisement of many Australians, including rural and disadvantaged electors. In Submission Number 205 to the Inquiry the AEC also assured of its ability to meet the high volume of enrolments made during the seven day close of rolls period in a fashion that protected against fraud and insured the integrity of the Electoral Roll. This Submission was not referred to or quoted in that part of the JSCEM Report that dealt with this particular issue.

It is important to emphasise that concerns regarding this matter do not come from the body charged with the responsibility of administering Australia's electoral processes, i.e. the AEC, and, in fact this body is confident of its ability to meet its statutory requirements in this respect.<sup>18</sup>

- 3.44 Dr Edwards then went on to say:

Put another way the recommendations of the JSCEM in 2005 were made on the basis of speculations and possibilities, not on evidence that any fraudulent activity had, in fact, occurred, and

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18 Dr Kathy Edwards, submission 87, p 4.

without due consideration of human rights implications. 'Integrity', or its lack, thus became a speculative issue, but the possibility that this could hypothetically occur was deemed more important than evidence that disadvantage to particular groups within Australian society was likely to occur should the rolls be closed early.<sup>19</sup>

- 3.45 The Australian Labor Party National secretariat considered that the changed close of rolls arrangements had restricted the vote.<sup>20</sup> The Australian Labor Party National secretariat noted that:

The ALP opposed these moves when they were introduced, citing the disengagement of many voters from the political process and the benefits for roll integrity of having the roll left open for a period after the calling of an election. The actions by the ALP and others in publicising the actions of the government no doubt served to boost enrolment numbers, however the systemic flaws in the current system must now be addressed.<sup>21</sup>

- 3.46 The AEC noted 'the need to approach with caution the interpretation of statistics regarding the number of people who enrol between the announcement of an election and the close of the rolls'.<sup>22</sup> In urging caution about the interpretation of the statistics the AEC noted:

During the period from 14 to 23 October 2007, 279,469 people enrolled or changed their enrolment in time for the election, compared with 423,993 who enrolled or changed their enrolment details during the corresponding period (29 August to 7 September 2004) at the 2004 Federal election.

In 2007, however, 100,370 people missed the close of rolls deadline for enrolling or changing their enrolment details (by providing an enrolment form between close of rolls and polling day, too late for the election), compared to 168,394 people who missed the deadline in 2004. Given that in 2007 the gap between the announcement of the election and the deadline for new enrolments was 3 days, and that the gap between the announcement of the election and the deadline for updating existing enrolments was 9 days, it is arguable that the lower number of transactions in 2007 flowed from the AEC's extensive efforts to stimulate enrolment activity

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19 Dr Kathy Edwards, submission 87, p 5.

20 Australian Labor Party National Secretariat, submission 159, pp 2

21 Australian Labor Party National Secretariat, submission 159, pp 2-3.

22 Australian Electoral Commission, submission 169, p 8.

earlier in 2007... It is also worth comparing the total enrolment transaction (new enrolments, reenrolments and change of enrolments) for the year leading to the close of roll for the 2007 and 2004 elections, namely 2,519,917 and 2,200,117 respectively...<sup>23</sup>

## Committee conclusion

- 3.47 The committee notes that the announcement of the 2007 federal election was made on Sunday 14 October 2007 that the rolls closed for new enrolments on Wednesday 17 October 2007 and for changes to existing enrolment details on Tuesday 23 October 2007.
- 3.48 The committee considers that the close of rolls experience in 2007 is not representative of circumstances that would exist should a future election be announced on the same day as the issue of the writs.
- 3.49 In fact, some fortuitous circumstances existed in 2007 which masked the potential effect of the changed close of rolls arrangements.
- 3.50 Firstly, the election was announced some three days prior to the writs being issued. This would not have been the case if the election had been announced on the same day that the writs were issued, as the current legislation permits. The earlier announcement in 2007 allowed for new enrolments to be accepted for three further days, however, this timeframe falls well short of the seven day period which existed prior to 2007.
- 3.51 Secondly, electors were able to make changes to existing enrolment details for a similar period as they were in previous elections, but were able to do so only because Friday 19 October 2007 was a public holiday on Flinders Island in Tasmania and was deemed not to be a working day in accordance with the Commonwealth Electoral Act. This extended the time allowed for such changes to the electoral rolls to Tuesday 23 October 2007.
- 3.52 Under the current legislation, the electoral roll closes for new enrolments on the day that the writ is issued. If a future election was to be announced on the same day as the writs are issued, there would merely be hours during which new enrolments could be accepted by the AEC. This factor needs to be considered when making judgements about the adequacy of the current legislation.

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23 Australian Electoral Commission, submission 169, p 8.

- 3.53 The AEC advised that if the rolls had closed on Monday 15 October 2007 only 17,208 of the 279,469 enrolment transactions actioned during the close of rolls would have been made.<sup>24</sup>
- 3.54 If the writs were to be issued on a Monday or Tuesday, and there were no public holidays in any jurisdiction, the roll would close for changes to enrolment details on the Thursday or Friday of the same week. Given the mail delivery problems already evident in some regional and rural areas, this tight timeframe might have a deleterious impact on the ability of residents in those areas to update their enrolment details.<sup>25</sup>
- 3.55 The committee is concerned that despite the intense and costly advertising campaign and the enrolment stimulation activities undertaken by the AEC, the number of electors who missed the close of rolls deadlines for enrolments only declined from 168,394 in 2004 to 100,370 in 2007.<sup>26</sup>
- 3.56 Whilst it might be argued that a reduction of 68,024 in the number of people who missed out in 2007 when compared with the number in 2004 is a pleasing result, when viewed in the context of a \$30 million campaign targeted toward facilitating that very enrolment in the lead up to a federal election, it appears to be a disappointing result.
- 3.57 Of particular concern to the committee is that 31 seventeen year olds who would have turned eighteen on or before polling day and 4,068 eighteen year olds who would have exercised their franchise for the first time at the 2007 election were also denied the opportunity to do so because of the changed close of rolls arrangements.<sup>27</sup>
- 3.58 The committee can see no valid reason why it should be necessary to continue with close of rolls arrangements that serve to disenfranchise electors and that require unsustainable levels of funding to be expended in order to partly mitigate their effect.
- 3.59 The committee has received no evidence that fraudulent activity was reduced as a result of the amendments to the close of rolls. On the contrary, there is no evidence available that indicates systemic fraudulent activity exists.

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24 Australian Electoral Commission, sub 169.1, p 9.

25 see Joint Standing Committee on Electoral Matters, *The 2004 election: Report of the inquiry into the 2004 election and matters related thereto* (2005), pp 241–242.

26 Australian Electoral Commission, submission 169, p 8.

27 Australian Electoral Commission, submission 169.15, p 3.

- 3.60 Accordingly the committee recommends that the close of rolls arrangements revert back to those that existed up to and including the 2004 federal election.

### **Recommendation 1**

- 3.61 **The committee recommends that Section 155 of the *Commonwealth Electoral Act 1918* be repealed and replaced by a new section which provides that the date fixed for the close of the rolls shall be 7 days after the date of the writ.**

## **Exercising the franchise**

- 3.62 Exercising the franchise has been subject to protections at elections and referenda. These protections or savings provisions took two main forms.
- 3.63 The first involved reinstatement to the electoral roll at an election and is discussed here. The second involved savings provisions which apply to ballot papers and are discussed in Chapter 8.
- 3.64 All electors who attend polling places in their own electoral division on polling day and whose names can be found on the electoral roll for the election are issued with, and cast, ordinary votes. These ballot papers are placed directly into ballot boxes by the elector.
- 3.65 Electors who attend polling places in their own electoral division but whose names cannot be found on the electoral roll, those who attend a polling place in another electoral division, those who vote at pre-poll voting centres and those who vote by postal vote, all cast declaration votes in which the ballot papers are enclosed in declaration envelopes before being placed in the ballot box.
- 3.66 Declaration votes are subject to a preliminary scrutiny in which electoral officials determine the eligibility of the elector to vote in the relevant electoral division. The votes of those electors deemed to be eligible to vote are counted. The votes of those deemed ineligible are not. Specific issues relating to the receipt of postal votes are discussed later in this chapter.
- 3.67 At all elections and referenda conducted between 1984 and 2004, electors who cast declaration votes, but whose names were not on the roll, were reinstated to the roll where the AEC determined during the preliminary scrutiny that they had been previously enrolled for the relevant electoral

division, and that there was no evidence of a further enrolment in a different electoral division.

- 3.68 In such situations it was deemed that those electors' names had been removed from the roll in error by the AEC. As a result, the relevant House of Representatives and Senate ballot papers were included in the relevant counts and those electors were able to exercise the franchise.
- 3.69 Likewise, electors who claimed to be enrolled in an electoral division, but were found to be enrolled in a different electoral division in the same state or territory, had their Senate ballot papers included in the count, but the House of Representatives ballot papers were set aside. As a result, their franchise was ensured for the Senate election.

## 2007 election electoral roll

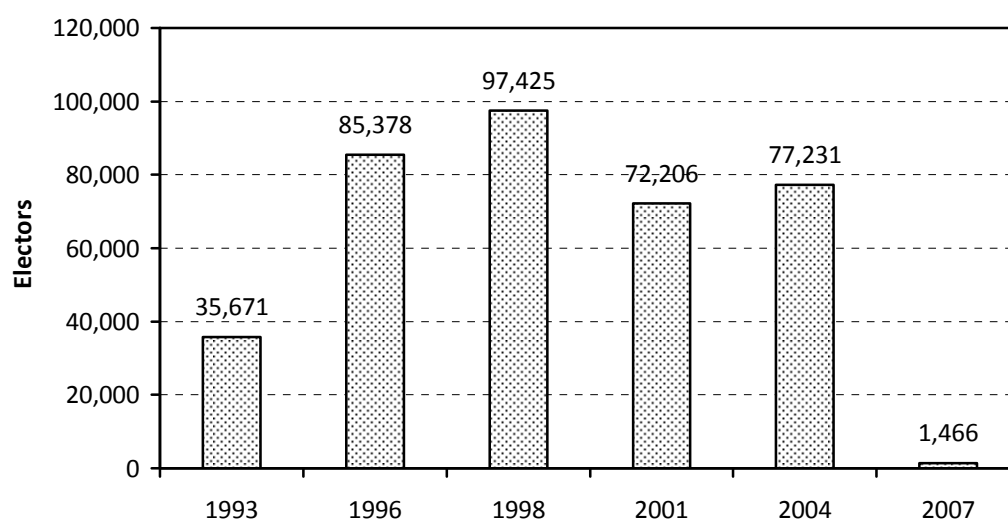
- 3.70 Two separate enrolment figures are instructive when considering enrolment at federal elections. The first is the close of rolls enrolment figure discussed earlier, which is indicative of the number of electors actually on the electoral roll at the date the roll closed.
- 3.71 The second is election enrolment, which indicates the number of electors who were deemed eligible to exercise the voting franchise at that election.
- 3.72 Election enrolment is arrived at as a result of the AEC making permitted adjustments to the electoral roll following the close of rolls. It includes:
- additions to the roll, primarily as a result of processing enrolment forms received prior to the close of roll but not processed due to time constraints (1,562 instances at the 2007 election),
  - deletions from the roll, primarily the removal of deceased electors (7,710 at the 2007 election), and
  - the reinstatement of electors who were not enrolled, but who were eligible to have their votes counted and had been removed from the roll in error by the AEC, (7,614 at the 2007 election).<sup>28</sup>
- 3.73 It is common in federal elections for election enrolment to be higher than close of rolls enrolment. This is mainly due to the reinstatement of electors who were otherwise eligible to have their vote counted but who had been removed from the roll by the AEC.

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28 Australian Electoral Commission, submission 169, p 7.

3.74 At the 2007 election, election enrolment at 13,646,539 saw an increase of just 1,466 electors over the close of rolls enrolment of 13,645,073 (figure 3.2).

Figure 3.2 Difference in close of rolls enrolment and election enrolment, 1993 to 2007 elections



Source Appendix C, table C.8.

3.75 When viewed in the context of elections since 1990, this is an extremely low increase compared to the high of 97,425 electors added to the roll in 1998, and the previous low of 35,671 electors added in 1993.

3.76 The significant decline from 77,231 in 2004 to 1,466 in 2007, is a product of two key legislative changes which were made between the 2004 and 2007 elections. These changes are discussed below.

3.77 The first change affected provisional votes, requiring all electors, bar silent electors, who lodge provisional votes to provide proof of identity (POI) at the time of voting, or by the first Friday following polling day. This change was recommended by the former Joint Standing Committee on Electoral Matters following the 2004 federal election.<sup>29</sup>

3.78 Provisional voters who failed to provide the required proof of identity had their provisional votes rejected, irrespective of the reasons which led to them requiring a provisional vote.

3.79 The AEC advised the committee that over 27,000 votes were rejected because proof of identity was not provided:

29 Joint Standing Committee on Electoral Matters, *Report on the 2004 federal election: Report of the inquiry into the conduct of the 2004 federal election and matters related thereto* (2005), Commonwealth of Australia, recommendation 25 p 79.

At the 2007 election, approximately 167,500 provisional votes were cast. Approximately 75 per cent of provisional voters showed evidence of identity when voting. Of those that did not provide evidence of identity when voting on polling day, approximately 20 per cent provided it by the cut-off of close of business on the first Friday following polling day (30 November 2007). Approximately 80 per cent, of voters who did not provide POI when voting on polling day did not provide it at all. The result is that over 27,000 votes were rejected at preliminary scrutiny because an elector did not provide proof of identity.<sup>30</sup>

- 3.80 The AEC went on to state that the admission rate for Senate provisional votes fell from 62.23 per cent in 2004 to 25.14 in 2007:

At the 2007 Senate election, there were 42,162 Senate votes counted nationwide from provisional votes admitted at preliminary scrutiny, out of a total of 167,682 provisional vote envelopes processed, an admission rate of 25.14 per cent. These figures may be compared with those from the 2004 Senate election, at which there were 112,560 Senate votes counted nationwide from provisional votes admitted at preliminary scrutiny, out of a total of 180,878 provisional vote envelopes processed, an admission rate of 62.23 per cent. Had the 2004 admission rate prevailed in 2007, an additional 62,186 votes would have been counted. The AEC is concerned that, in comparison to 2004, there was a significant increase in the number of provisional votes excluded at provisional scrutiny.<sup>31</sup>

- 3.81 It is important to note the differences which exist between the percentage of provisional votes which were admitted to the Senate counts (25.14 per cent) and those that were admitted to the House of Representatives counts (14.44 per cent). The difference exists because some electors have their votes counted for the Senate elections because they are currently enrolled in the respective state or territory, but not their House of Representatives votes because they are enrolled in a different division for that which they attempted to vote.
- 3.82 Some inquiry participants believe the changes to provisional voting were worthwhile and that the integrity of the electoral roll had been enhanced as a result of their adoption.

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30 Australian Electoral Commission, submission 169, p 47.

31 Australian Electoral Commission, submission 169, p 49.



- 3.83 The Liberal Party of Australia considered that the provisional voting changes were both desirable and effective:

A requirement for proof of identity for provisional voting was introduced into the Act in the last Parliament. In previous submissions we have expressed concerns about abuse of the provisional voting system. The changes in the number of provisional votes admitted to the count in 2007 reinforce us in the view that there had previously been problems that the POI requirement has helped to address. The change made by the last Parliament was clearly a desirable reform which has enhanced the integrity of our electoral system. No evidence has been produced to support the need for further change or reversion to the previous standard. In fact, the operation of the new standard in 2007 clearly showed the importance of the new standard.<sup>32</sup>

- 3.84 The Festival of Light Australia supported proof of identity requirements for electors and recommended extending proof of identity requirements to all electors at the time of casting votes. Such an approach was also supported by The Nationals and the Hon Fran Bailey MP.<sup>33</sup>

- 3.85 On the other hand, some believe the changes to provisional voting were unwelcome and should be repealed.

- 3.86 GetUp! submitted that the committee should ensure that provisional voting does not disenfranchise eligible electors:

Their impact on election results aside, provisional voters include many Australians we should be making a concerted effort to include in the democratic process. Indigenous, young, migrant and poorer Australians are all overrepresented among provisional voters.<sup>34</sup>

- 3.87 The ALP National Secretariat was concerned by the large drop in provisional votes admitted to the count in 2007:

The ALP is also extremely concerned about the drop in the number of provisional votes which survived the initial count. In 2004, almost half of the attempted provisional votes were accepted and counted, in line with what occurred in previous elections. In

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32 Liberal Party Of Australia, submission 156, p 3.

33 Festival Of Light Australia, submission 67, p 10; The Nationals, submission 145, p 2, Hon Fran Bailey MP, Member for McEwen, submission 179.

34 GetUp!, submission 155, pp 14–15.

2007, however, 86 per cent of provisional votes were rejected and only 14 per cent were accepted.<sup>35</sup>

- 3.88 NSW Young Labor was also critical of the changes, noting that young people were disproportionately affected by the amendments :

Making it harder for young people, often students juggling considerable study and work commitments to support those studies, and often regularly changing their addresses, was the consequence of the above legislative changes. In part, it contributed to the escalating increases in the number of provisional votes, and more specifically, in the noticeable increase in the number of provisional votes subsequently excluded by the relevant DROs. Widely available AEC figures demonstrate the growing problem of high numbers of provisional votes, and more specifically the ever-increasing number of exclusions...<sup>36</sup>

- 3.89 During the inquiry much discussion centred on the fact that provisional votes were actually signed by the elector and that the signature contained on the declaration envelope in which the votes were contained could be compared with the signature of the elector which appeared on the original or subsequent enrolment forms which were held by the AEC.

- 3.90 Former Electoral Commissioner, Mr Ian Campbell noted that provisional votes were in fact signed by the elector:

CHAIR – The proof of identity argument is a nonsense argument on provisional voters. Let me tell you why: they fill out an envelope with their signature on it.

Mr Campbell – Exactly.

CHAIR – You then go back through the process and check the signature that was on their application for enrolment that was lodged with you. There is your proof of identity: it is a comparison of signatures. You do not need a licence to get reinstatement; you have signatures.<sup>37</sup>

- 3.91 Mr Campbell went on to tell the committee that provisional voters, even those who were on the electoral roll, were ruled out of the count because of the POI provisions:

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35 ALP National Secretariat, submission 159, p 4.

36 NSW Young Labor, submission 182, p 2.

37 Campbell I, Australian Electoral Commission, transcript, 27 June 2008, p 21.

Can I make one other point, because I think this is one of the issues that caused some difficulty for a small number of voters in 2007, in addition to what I have been saying. The way the legislation is worded, if a person comes in and the issuing officer cannot find them on the certified list, they get issued with a provisional vote. We had people in this category. They then have six days, or five working days till the following Friday, to give us POI. If they do not give us POI then the process goes no further, including for those who are on the certified list but the issuing officer made a mistake.<sup>38</sup>

- 3.92 When asked whether the AEC had the capacity to compare the signature on a provisional vote with the actual enrolment form lodged by the elector at the time of original or subsequent enrolment forms Mr Paul Dacey, Deputy Electoral Commissioner agreed that the AEC could do so and that it had been done so previously:

CHAIR – And the truth is that there was a signature on every one of those declaration forms that could have been compared to a signature of the elector that the Australian Electoral Commission already had, and it could have acted as proof of identity and allowed those votes to be included in the count.

Mr Dacey – That could have been done.

CHAIR – Previously that was what was done in prior elections.

Mr Dacey – It was one of the processes that we undertook previously.<sup>39</sup>

- 3.93 Another change to the legislation, which, when combined with the change to provisional voting outlined above, reduced the number of electors able to exercise the voting franchise. An amendment to paragraph 12 of schedule 3 to the Commonwealth Electoral Act effectively prevented electors who had been removed from the electoral roll by objection action on the grounds of non residence at a particular address, from being reinstated to the roll as a result of lodging declaration votes of any form, not just provisional votes.
- 3.94 The AEC advised the committee that the amendment to schedule 3 affected all declaration vote types:

In relation to the removal of persons from the electoral roll by objection based on non-residence, Item 96 of Schedule 1 to the

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38 Campbell I, Australian Electoral Commission, transcript, 27 June 2008, p 21.

39 Dacey P, Australian Electoral Commission, transcript, 17 March 2009, p 22.

*Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* amended paragraph 12 of Schedule 3 to the CEA, adding the following word and sub-paragraph:

“; and (iii) that the omission was not attributable to subsection 118(4A).”.

The effect of that amendment was that if a person had been removed from the roll by objection action on the ground of non-residence at a particular address, a declaration vote (provisional, absent, postal or pre-poll) subsequently cast by the person would be rejected at preliminary scrutiny. The amendment was not one which had been recommended by the JSCEM in its 2004 Election Report.<sup>40</sup>

- 3.95 In effect, schedule 3 to the Commonwealth Electoral Act provides the rules which govern the conduct of preliminary scrutines of declaration votes. Amongst other things, the decisions made by the Divisional Returning Officer about the eligibility of an elector and their inclusion on or exclusion from the electoral roll for the election, are determined in accordance with these prescriptive rules.
- 3.96 Prior to these amendments, where an elector cast a declaration vote and claimed to be resident at an address for which they had been removed from the roll, the Divisional Returning Officer would check the elector's enrolment history to determine their last enrolled address. In cases where the last enrolled address was the same as that on the declaration envelope, it was accepted that an error had been made by the AEC in taking the elector off the electoral roll. On that basis the electors was reinstated to that address.
- 3.97 Now, in that same situation, the elector is not reinstated to the electoral roll, and their vote is not counted in the elections.
- 3.98 The AEC further suggested that it is important, when considering the policy questions which arise from this amendment, to focus on a number of key considerations:
- The right to vote is a fundamental one, which has a basis in sections 7 and 24 of the Constitution. The extent and nature of the basis of that right is touched upon by the High Court of Australia in the 2007 case of *Roach v. Electoral Commissioner and Another* (2007) 239 ALR 1.

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40 Australian Electoral Commission, submission 169, p 50.

- Notwithstanding the centrality of the roll to the modern electoral process, the roll is not an end in itself, but rather one of a number of tools devised to be used by electoral officials as an efficient and effective way of deciding who should and should not be entitled to record a vote.
  - The very existence of provisional voting constitutes a recognition that the absence of a person's name from the roll cannot provide a final and definitive answer to the question of whether that person should be permitted to vote.<sup>41</sup>
- 3.99 Together, the combined effect of these two amendments – the requirement for proof of identity for provisional voting, and the amendment to schedule 3 preventing declaration voters being reinstated to the roll, served to reduce the number of electors who, had those amendments not been made, would have been added back onto the roll at the 2007 federal election.

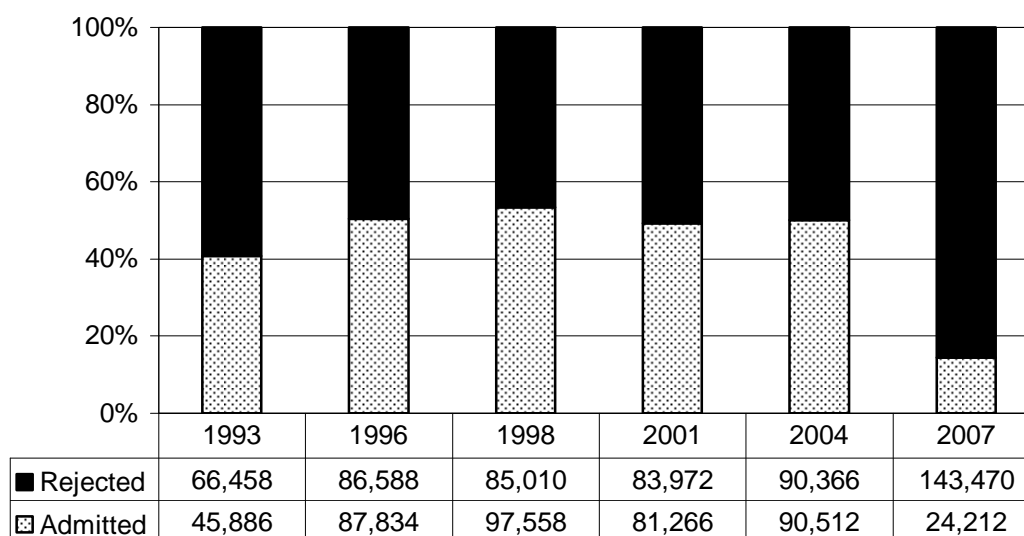
## Committee conclusion

- 3.100 The committee notes with concern that the relatively small increase in electors from close of rolls enrolment to election enrolment at the 2007 election does not compare favourably to previous elections.
- 3.101 The committee is of the view that whilst the legislative changes which required proof of identity for provisional voters were noted and commented upon by inquiry participants, the machinery changes to schedule 3 to the Commonwealth Electoral Act were commented on by very few, with the exception of the AEC, which highlighted the effect of those changes to the committee.
- 3.102 Notwithstanding the fact that the deleterious effect of the changes were only obvious to those who designed them and those who were subsequently directly involved in the preliminary scrutiny process, it is clearly unjust to firstly remove people from the roll on the basis that the AEC does not think they live where they claim to live, and secondly, reject any attempts by those electors to vote in accordance with the franchise that they are actually entitled to exercise.
- 3.103 At a national level the effect of the requirement to provide proof of identity is clearly evident in figure 3.3 which shows the dramatic increase in provisional votes rejected from the House or Representatives counts in 2007 (85.5 per cent) when compared to previous elections.

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41 Australian Electoral Commission, submission 169, p 50.

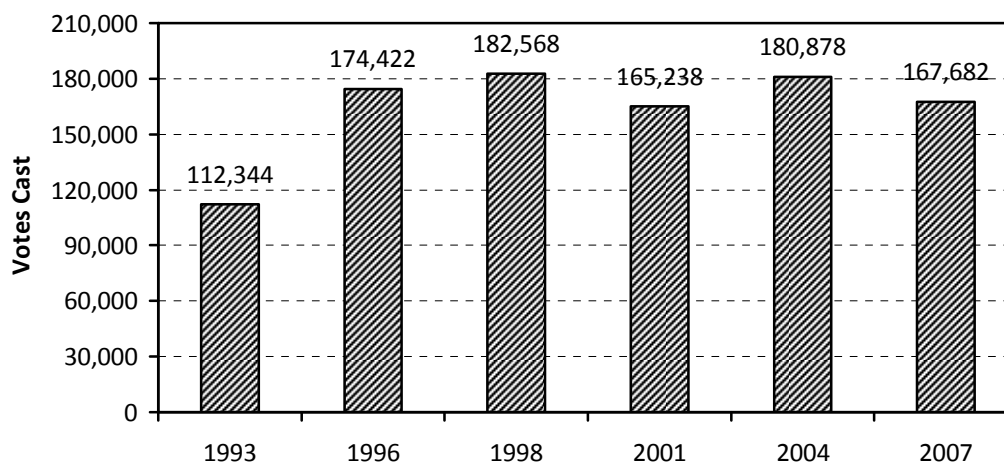
Figure 3.3 Provisional votes, 1993 to 2007 elections (per cent)



Source Appendix C, table C.5.

- 3.104 The committee is aware that some may argue that fewer provisional votes were in fact required in 2007 as a result of the increased 'integrity' that resulted from the changes to the close of rolls, the advertising campaign and the increased number of electors on the roll. However, such arguments would only be valid if the number of provisional votes cast was significantly less than in previous elections.
- 3.105 The committee notes that a comparison of provisional votes cast in elections since 1993, shows no significant decrease in the number of provisional votes cast in 2007 when compared to previous elections as seen in figure 3.4.

Figure 3.4 Provisional votes cast, 1993 to 2007 elections



Source Appendix C, table C.3.

- 3.106 The committee believes, therefore, that the changes to the close of rolls and provisional voting had no beneficial effects at all, rather they had the effect of limiting the franchise and have had a particular effect on those most marginalised in the community.
- 3.107 In this respect, the committee agrees with the comments of the Hon Warren Snowdon MP, who noted the effect on electors in Lingiari in his submission:

Changes to the Electoral Act requiring voters to produce identification to secure a provisional or declaration vote has resulted in a significant decrease in the number of voters lodging these types of votes. In 2004 in Lingiari 480 voters lodged declaration votes that were found to be valid. However in 2007 this group had shrunk to 129.

Evidence seems to suggest that where AEC officials asked voters to produce identification very few had such identification on their persons. Many voters were instructed to return with valid identification. It is apparent that in the main they did not. Where local community members were used as interpreters they generally provided evidence of the valid identification of voters claiming a provisional or declaration vote.<sup>42</sup>

42 Hon Warren Snowdon MP, submission 162, p 3.

- 3.108 The committee accepts there is a need to ensure integrity in elections and electoral enrolment, and notes that a number of changes to the Commonwealth Electoral Act were instituted by the previous government on the pretext of enhancing electoral integrity.
- 3.109 The committee does not, however, accept that it is desirable nor necessary to disenfranchise otherwise eligible electors in order to do so, especially as there is no credible evidence to suggest that measures like proof of identity for provisional voting have increased that integrity (see chapter 2).
- 3.110 This is especially the case in respect of provisional votes where an entirely effective, alternative remedy has been used in the past by the AEC to satisfy doubt as to the identity of a person who casts a declaration vote.
- 3.111 A simple comparison of the signature of the voter against the signature of the elector on a previous enrolment form is all that is required.
- 3.112 The committee notes that the AEC has advised it has the ability to do such checks and believes that the AEC should carry out such a check wherever doubt exists in the mind of the Divisional Returning Officer as to the bona fides of the elector who casts a provisional or other declaration vote.
- 3.113 Accordingly, the committee recommends that the provisions of the *Commonwealth Electoral Act 1918* and the *Electoral and Referendum Regulations 1940* that require provisional voters to provide proof of identity be repealed.



## Recommendation 2

- 3.114 **The committee recommends that the provisions of the *Commonwealth Electoral Act 1918* and the *Electoral and Referendum Regulations 1940* that require provisional voters to provide proof of identity**
- **be repealed; and**
  - **that the *Commonwealth Electoral Act 1918* be amended so that where doubt exists in the mind of the Divisional Returning Officer as to the bona fides of an elector who casts a declaration vote, that the Divisional Returning Officer is to compare the signature of the elector on the declaration envelope to the signature of the elector on a previously lodged enrolment record before making the decision to admit or reject the vote.**
- 3.115 The amendments to schedule 3 to the Commonwealth Electoral Act escaped the notice of many inquiry participants, however, the committee views the use of the roll as a tool to disenfranchise electors as a matter of grave concern.
- 3.116 The committee notes that at federal elections from 1984 to 2004, the Commonwealth Electoral Act provided for electors who had been removed from the roll on the grounds of alleged non residence, who cast declaration votes for an address in the same electoral division from which they had been removed, to have their House of Representatives and Senate votes admitted to the count.
- 3.117 Similarly, where such electors claimed to be enrolled at an address in the same state or territory, but in a different electoral division to that from which their names had been removed, their Senate votes were admitted but their House of Representatives votes were not.
- 3.118 The committee believes that the tradition of providing safety nets, such as allowing the reinstatement of electors in the circumstances outlined above, is consistent with the aim of ensuring electoral legislation does not create unreasonable barriers for those who qualify for enrolment and voting and who, rightfully, expect to be able to exercise their franchise at elections and referenda. The effectiveness of the safety nets is starkly represented in figure 3.3 above where the effects of its removal show a reduction of over 75,000 electors exercising the franchise in 2007 when compared to 2004.

- 3.119 The changes to paragraph 12 of schedule 3 to the Commonwealth Electoral Act, which prevented such reinstatements at the 2007 election were not, in the committee's view, consistent with this long held aim. Rather they served to restrict the franchise, and, when coupled with the requirement for provisional voters to provide proof of identity, actively disqualified electors who would otherwise be eligible from voting.
- 3.120 The committee accepts the position put by the AEC that the amendments preventing reinstatement should be repealed.<sup>43</sup>
- 3.121 The AEC also suggests that electors, whose votes would be included in the count because they are reinstated to the roll for the election, should then have to apply for re-enrolment through the subsequent lodgement of an enrolment form.<sup>44</sup>
- 3.122 The committee, however, believes that wherever electors provide the AEC with information which could be used to update the electoral roll, the AEC should firstly be empowered to use that information, and secondly it should use it in a manner that ensures some efficiency is gained from its provision.
- 3.123 In preference to undertaking follow up enrolment action to seek a completed enrolment form, as suggested by the AEC, the committee believes that the AEC should amend its declaration envelopes to include a field on which electors may provide their driver's licence or Australian passport number at the time of voting. The provision of such information should be voluntary and its provision should not be deemed necessary in order to determine any elector's eligibility to cast a vote.
- 3.124 In cases where electors voluntarily provide the driver's licence or Australian passport number, or where that elector had previously met the proof of identity provisions for enrolment, the AEC should be empowered to update the enrolment details of the elector on the basis of the information supplied on the declaration envelope at the time of casting the declaration vote. Similarly, provision of the driver's licence or Australian passport number should be sufficient to classify any elector as having met the proof of identity provisions for enrolment without the necessity to also fill in a new proof of identity compliant enrolment form.
- 3.125 The committee considers that the AEC should only need to implement follow up enrolment action in those cases where electors do not supply a driver's licence or Australian passport number on a declaration envelope
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43 Australian Electoral Commission, submission 169, p 51.

44 Australian Electoral Commission, submission 169, p 51.

and the elector has not previously met the proof of identity requirements for enrolment, or where insufficient information is provided on the envelope to allow the roll to be updated.

3.126 Accordingly, the committee recommends that the Commonwealth Electoral Act should be amended to provide that where an elector who has lodged a declaration vote at an election had been removed from the roll by objection action on the ground of non-residence and the relevant action has occurred since the previous federal election, then:

- if the address at which the elector claims to be enrolled at the time of voting is within the division for which he or she was previously enrolled, his or her House of Representatives and Senate votes will be counted; but
- if the address at which the elector claims to be enrolled at the time of voting is in a different division in the same state/territory, his or her Senate vote will be counted, but his or her House of Representatives vote will not be counted.

### Recommendation 3

- 3.127 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended to provide that where an elector who has lodged a declaration vote at an election has been removed from the roll by objection action on the ground of non-residence and**
- (a) the omission occurred after the election prior to the election to which the scrutiny relates, or**
  - (b) where there has been a redistribution of the state or territory that includes the division since the last election but one before the election to which the scrutiny relates, the omission from the roll was made before the last such redistribution, then:**
    - **if the address at which the elector claims to be enrolled at the time of voting is within the division for which he or she was previously enrolled, his or her House of Representatives and Senate votes will be counted; but**
    - **if the address at which the elector claims to be enrolled at the time of voting is in a different division in the same state/territory, his or her Senate vote will be counted, but his or her House of Representatives vote will not be counted.**
- 3.128 Further, the committee recommends that the AEC should amend declaration vote envelopes to include a field on which electors may enter driver's licence numbers, and:
- in those cases where electors provide a driver's licence or Australian passport number on a declaration envelope, or the elector has previously met the proof of identity requirements for enrolment, and the information provided on the envelope at the time of voting is sufficient to allow update of the electoral roll, the AEC should update the roll on the basis of the information provided on the declaration envelopes; but
  - in other cases, the AEC undertake appropriate follow up action to encourage the elector to enrol through the normal enrolment process.

## Recommendation 4

- 3.129 **The committee recommends that the Australian Electoral Commission amend declaration vote envelopes to include fields in which electors may enter their driver's licence or Australian passport number, and:**
- **in those cases where electors provide a driver's licence or Australian passport number, or the elector has previously met the proof of identity requirements for enrolment, and the information provided on the envelope at the time of voting is sufficient to allow update of the electoral roll, the Australian Electoral Commission should update the roll on the basis of the information provided on the declaration envelopes; and**
  - **in other cases the Australian Electoral Commission undertake appropriate follow up action to encourage the elector to enrol through the normal enrolment process.**

## Enfranchising postal voters

- 3.130 Under current arrangements for postal voting, the Commonwealth Electoral Act requires that postal votes must be received by the relevant Divisional Returning Officer within 13 days of polling day.<sup>45</sup> However, where the envelope containing the ballot paper bears a postmark that includes a date after polling day, the vote is excluded from the count.<sup>46</sup>
- 3.131 Votes will be excluded even if the elector and witness date on the postal voting certificate is before polling day and the envelope has been placed in an Australia Post mail box before polling day.
- 3.132 Where the envelope bears no postmark the votes will be admitted to the count.
- 3.133 The AEC has had longstanding concerns with this situation and have generally supported utilising the witnessing date, rather than any post mark, to establish whether a vote should be included in the count.<sup>47</sup>
- 3.134 Previous Joint Standing Committees on Electoral Matters have also examined this issue and have recommended on a number of occasions

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45 *Commonwealth Electoral Act 1918*, s 228 (5A).

46 *Commonwealth Electoral Act 1918*, Schedule 3, s 7.

47 Australian Electoral Commission, submission 169.14, p 1.

that the Commonwealth Electoral Act be amended to provide for postal votes to be included on the basis of the witnessing date on the postal voting certificate.<sup>48</sup> Following the 2004 election inquiry report, the then government did not support this view, considering that 'such changes would weaken the integrity of Australia's electoral system'.<sup>49</sup>

- 3.135 The Nationals noted that there is an inconsistency regarding the AEC's requirement for lodgement, receipt and acceptance of a valid postal vote with the capacity of mail services to achieve these requirements and suggested that the guiding objective in designing appropriate postal voting arrangements should be to ensure maximum opportunity is provided to voters for the casting of a valid postal vote.<sup>50</sup> The Federal Director of the Nationals noted that:

Clearly the system is not working. We have set up the system and created a public expectation that, if people lodge their postal votes until election day, they will be counted, but the logistics of the system are not allowing that to happen. I think we have to look creatively at other ways of allowing those votes to be counted, particularly in close contests. I note that last time you recommended relying on the word of the voter in terms of the date they signed it and dated it. We are not averse to looking at that, but I think you need to look at that in the context of ensuring that that is not open for abuse as well and that we are continuing to improve the integrity of the process.<sup>51</sup>

- 3.136 The committee has closely examined this issue once more, bringing together officials from Australia Post and the AEC for a roundtable discussion. Following this roundtable additional information was provided by Australia Post and the AEC to assist the committee in considering this issue.

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48 Joint Standing Committee on Electoral Matters, *The 1996 federal election: Report of the inquiry into the conduct of the 1996 federal election and matters related thereto* (1997), Commonwealth of Australia, p 58; *The 1998 federal election: Report of the inquiry into the conduct of the 1998 federal election and matters related thereto* (2000), Commonwealth of Australia, p 55; *The 2001 federal election: Report of the inquiry into the conduct of the 2001 federal election and matters related thereto* (2003), Commonwealth of Australia, p 150; *The 2004 federal election: Report of the inquiry into the conduct of the 2004 federal election and matters related thereto* (2005), Commonwealth of Australia p 75.

49 Australian Government, response to the Joint Standing Committee on Electoral Matters inquiry into the conduct of the 2004 election and matters related thereto, p 9, viewed on 22 May 2009 at [www.aph.gov.au/house/committee/em/elect04/Report/govres.pdf](http://www.aph.gov.au/house/committee/em/elect04/Report/govres.pdf).

50 The Nationals, submission 145, p 5.

51 Henderson B, The Nationals, transcript, 3 February 2009, p 8.

## Background

3.137 The AEC provided a range of information that demonstrates the extent to which the postal system can lead to some votes being excluded from the count:

- 23,600 electors were sent postal vote certificates but did not vote by post or other means;<sup>52</sup>
- 8,041 postal votes were rejected for the following reasons relating to being cast or received late:
  - ⇒ The voter declaration was signed after polling day; or
  - ⇒ The envelope was received 13 days after polling day.<sup>53</sup>

3.138 It is not possible to determine the actual number of postal votes which were lodged prior to polling day but postmarked by Australia Post after polling day, nor the number which were actually signed after polling day, because of the way the data was collected by the AEC, with the AEC noting that:

Postal votes rejected because the envelope was postmarked after polling day will, for the most part, be included in the total for postal votes rejected because the voter declaration was signed after polling day (i.e. votes cast late).<sup>54</sup>

3.139 An example of how current arrangements had impact on the division of Flynn was provided by the Nationals:

In some areas, mail collected by Australia Post on that Friday is not actually processed and postmarked until the following week, rendering any such postal votes invalid. In tight contests this anomaly could certainly affect the final result.

For example, in the seat of Flynn, a total of 7,727 postal votes were returned with 370 (or 4.8%) rejected during the preliminary scrutiny process. Of these postal vote certificates, 146 (or 1.9% of the total number of postal votes returned) were rejected on the grounds of being received 'too late' ie. postmarked after polling day, 24 November 2007. The AEC has identified that the majority of these postal votes were sourced from small rural centres. Labor won the seat by a margin of just 253 votes.

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52 Campbell I, Australian Electoral Commission, transcript, 1 September 2008, p 10.

53 Australian Electoral Commission, submission 169.5, pp 1–6; submission 169.14, p 1.

54 Australian Electoral Commission, submission 169.5, pp 1–6; submission 169.14, p 1.

The example is borne out by the case of a couple from Wandoan, which the AEC investigated at The Nationals request. AEC examination of both voters' postal vote certificates reveals that each certificate is signed and includes a date of Friday 23 November 2007. These voters confirmed that their votes were posted on Friday, yet the AEC investigation revealed both postal vote certificate envelopes depicted a Taroom Post Office stamp dated Monday 26 November 2007 ie. a postmark after polling day. The voters apparently received a letter from the AEC in the week commencing 18 February stating their votes were not counted in the Federal election because their postal votes didn't arrive until 2 weeks after election day.

Clearly, there is an inconsistency regarding the AEC's requirement for lodgement, receipt and acceptance of a valid postal vote with the capacity of mail services to achieve these requirements. There is a corresponding inconsistency with regard to voter expectations surrounding these requirements.<sup>55</sup>

- 3.140 The practice of postmarking mail, whereby a date stamp is placed on an envelope, has declined significantly for mail processed by Australia Post, with only about 7.5 per cent of mail posted having stamps and requiring cancellation.<sup>56</sup> Australia Post told the committee that:

That proportion varies dramatically depending on where you are. For example, that percentage would be more typical of a metropolitan area. In more remote areas, because there is not so much bulk post locally, that percentage would be higher. I am just saying that postmarking is something that is going out over time. Even when we were postmarking large quantities of mail there were some articles that were posted through street posting boxes or over the counter that did not require postmarking. It is the same today when we postmark. Business reply paid is one of those categories, along with mail being returned to the sender.<sup>57</sup>

- 3.141 Nevertheless, Australia Post practice, even for a business reply article, was to mark an article wherever possible.<sup>58</sup> Australia Post noted that:

When postmarking was done by hand, the postmark would traditionally be on the back. To this day we still replicate that

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55 The Nationals, submission 145, pp 4-5.

56 Newman D, Australia Post, transcript, 1 September 2008, p 11.

57 Newman D, Australia Post, transcript, 1 September 2008, pp 11-12.

58 Newman D, Australia Post, transcript, 1 September 2008, p 12.



process with our machines. Wherever an article goes through a machine, whether it has a stamp or not, we put a processing mark on that envelope. The reason we can do that is that we have high-speed inkjet printers attached to our processing machines that spray on a mark. We do that as much as we can and in as many places as we can. In the case of Jundah, we would only be looking at cancelling the locally posted mail because that is distributed. It would be much more cost-effective to send the rest to a larger centre which has some machine assistance to do that.<sup>59</sup>

- 3.142 For those items that are postmarked, postmarking may not necessarily occur on the day mail is processed, as mail moves from local post offices and outlets through larger distribution centres. Australia Post provided examples of how mail is moved around in regional Queensland to demonstrate how and when mail processing would occur depending on when mail was posted.<sup>60</sup>
- 3.143 Information provided by Australia Post gives an indication of how rural and remote postal voters may be affected when mail is moved from rural and remote offices for processing, with 262 rural or remote offices accepting, consolidating and dispatching mailings to another postal processing point within Australia on less than a daily basis.<sup>61</sup> Of these, due to resourcing and time constraints only 57 offices are able to append a postmark to mail upon lodgement and before dispatch – leaving 205 offices where mail is not postmarked at point of lodgement.<sup>62</sup> On a state by state basis:
- Queensland has 64 offices that despatch less than daily, 51 of which do not append a postmark;
  - South Australia has 92 offices that despatch less than daily with no office postmarking upon lodgement;
  - New South Wales has 28 offices that despatch less than daily, 18 of which do not append a postmark;
  - Western Australia has 46 offices that despatch less than daily, 12 of which do not append a postmark;
  - The Northern Territory has 31 offices that despatch less than daily. with no office appending a postmark upon lodgement; and

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59 Newman D, Australia Post, transcript, 1 September 2008, pp 11-12.

60 Australia Post, exhibit 5.

61 Australia Post, submission 192, p 1.

62 Australia Post, submission 192, p 1.

- Tasmania has 1 office that despatches less than daily and it does not append a postmark.

3.144 While almost half of these 262 rural and remote offices have a dispatch frequency of three days per week and a further third have a dispatch frequency of twice a week, not all dispatches necessarily occur on the same day or days at these post offices.<sup>63</sup> Australia Post also noted that dispatch times vary and dispatch may not even occur after close of business on these days:

The majority of offices that have three day a week despatches have Monday, Wednesday and Friday despatch times. However, not all despatch times are after close of business hours. A number of despatches on a Friday occur as early as 10am. The 35 offices that have one despatch per week have despatches ranging from Tuesday to Sunday. Thus in an extreme example, a postal vote return correctly lodged on Saturday morning but not despatched until Friday the following week would be postmarked or process imprinted on the following Monday, eight days after polling day.<sup>64</sup>

3.145 The delay between posting and Australia Post postmarking mail may not always be confined to a single day. Australia Post noted that:

In extreme instances it can take up to eight days for an item that is lodged in the network in one of these rural or remote offices to have a postmark or processing imprint placed on it. Even in situations where there are daily clearances any mail piece lodged in a Street Posting Box after it is cleared on a Friday night will not be postmarked until Sunday at the earliest - which in the context of a Postal vote for a federal election would render the vote invalid.<sup>65</sup>

3.146 While delays in collecting and processing mail in rural and remote areas can be significant, even mail posted in Australia Post's 15,000 street postal boxes on the Friday before polling day, including those in metropolitan areas, will not be processed until the following Sunday or Monday.<sup>66</sup> Therefore, if this mail is postmarked, the postmark will be dated either for the Sunday or Monday as the case may be, resulting in those postal votes being excluded from the count.

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63 Australia Post, submission 192, p 4.

64 Australia Post, submission 192, p 4.

65 Australia Post, submission 192, p 1.

66 Franzi B, Australia Post, transcript, 1 September 2009, pp 8-9.

3.147 In summing up to the committee, Australia Post considered that not all postal votes posted before polling day would necessarily be included in the election count.<sup>67</sup> Australia Post noted that:

Due to operational constraints, geographic spread and cost impacts Australia Post cannot guarantee postmarking of all Postal Votes will occur prior to or on the day of the Federal Election.<sup>68</sup>

## Proposed changes

3.148 Following the roundtable discussion and the additional information provided by Australia Post and the AEC, the Federal Director of the Nationals considered that the problem was clearly a serious one, with many Australians being denied their right to have their vote counted despite having fulfilled all of their responsibilities regarding the exercise of that right.<sup>69</sup> The Federal Director noted that:

Our party appreciates the candour now shown by officials from both agencies regarding this issue, but we regret that it is only now, after the election and after the Nationals and their volunteer members spent many, many unpaid hours investigating a glaring shortcoming in the system, that the lid has been lifted on that shortcoming. It is fair enough to ask why this problem was not earlier identified by the agencies in question themselves, and I think it also underlines the importance of the role this committee plays that through its processes we have been able to expose this problem.

There is a real possibility that this shortcoming may have affected the result in at least one seat at the 2007 election; of course, we will never know now. We cited just one example in our written submission of a couple in the division of Flynn who voted legitimately by post but whose votes were not counted by the AEC because of the mail delivery constraints within Australia Post, but our scrutineers are aware of many more.<sup>70</sup>

3.149 The Nationals suggested that a 'multipronged' approach was required to rectify this issue. That should include both, improving the logistical processes within Australia Post and revisiting the possibility that postal

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67 Australia Post, submission 192, p 5.

68 Australia Post, submission 192, p 5.

69 Henderson B, The Nationals, transcript, 3 February 2009, p 4.

70 Henderson B, The Nationals, transcript, 3 February 2009, p 4.

votes be accepted on the basis of the date of the witness signature rather than the current method of reliance on an envelope's postmarked date.<sup>71</sup>

3.150 Some of the other options to address this situation examined by the committee included:

- Lengthening the timeframe for the receipt of postal votes beyond the 13 days currently provided for;<sup>72</sup>
- Encouraging more people in rural and remote areas to be registered as general postal voters;<sup>73</sup>
- Promoting awareness, particularly for electors living in rural and remote areas, that a postal vote can be completed before polling day, thereby promoting a more timely return of postal votes;<sup>74</sup> and
- Conducting a special clearance and processing by Australia Post (as is done during the lead up to Christmas) on the Friday before polling day or on the evening of polling day so that these postal votes will be included in the count.<sup>75</sup>

3.151 The committee notes that the cut-off period for accepting postal votes varies for state and territory elections. For example, in South Australia electors have seven days to return their postal vote, in Victoria electors have nine days and in New South Wales electors have until close of business on the 4<sup>th</sup> day after polling to return their postal vote.<sup>76</sup>

3.152 The AEC canvassed the potential impact of some of these responses in a confidential submission to the committee, which covered the practices of some other jurisdictions and some of the risks involved in adopting different courses of action.

## Committee conclusion

3.153 It is clear to the committee that current postal voting arrangements can lead to delays in the delivery and processing of postal vote applications and postal votes. The situation is that some electors are clearly disenfranchised because of postal delivery issues, despite them meeting all

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71 Henderson B, *The Nationals*, transcript, 3 February 2009, p 4.

72 Henderson B, *The Nationals*, transcript, 3 February 2009, p 11.

73 Campbell I, *Australian Electoral Commission*, transcript, 1 September 2008, p 2; Gordon M, submission 32, p 3.

74 Campbell I, *Australian Electoral Commission*, transcript, 1 September 2008, p 2.

75 Newman D, *Australia Post*, transcript, 1 September 2008, p 9.

76 *Australian Electoral Commission*, submission 169.1, Annex 5, pp 76–78.

obligations in relation to correct lodgement of postal votes. Detailed evidence gathered by the committee has demonstrated how such electors, who post valid postal votes before polling day can be disenfranchised, should their postal vote be one of the less than 10 per cent of mail items that is postmarked by Australia Post. This situation, while generally acknowledged to be an issue in rural and remote areas, applies equally to mail posted at one of the 15,000 post boxes across the country, including those in metropolitan areas.

- 3.154 However, the use of the postmark as a determinant of timeliness remains an independent verification that postal votes have been cast before the close of the poll, notwithstanding the number of postal votes which are ruled ineligible because of Australia Posts' administrative arrangements.
- 3.155 The committee considers that it is ultimately desirable to ensure that all election mail is postmarked appropriately, especially postal votes; however, it understands that there are practical difficulties in achieving this outcome.
- 3.156 There are a number of possible alternatives to the present timeframes and cut-off, including the provision of special election services by Australia Post to validate postal votes posted prior to polling day.
- 3.157 The committee considers that on balance, the only solution to this problem that is presently available is to determine the validity of postal votes based on the witness date.
- 3.158 Accordingly, the committee is of the view that the government consider amending the Commonwealth Electoral Act to allow the date of the witness signature on the postal vote certificate to be the determining date for validity of postal votes; and to require postal voters and witnesses to confirm that the required voting actions were completed prior to the close of poll in the state/territory in which the electoral division for which the voter is enrolled, is located.

## Recommendation 5

3.159 The government consider amending the *Commonwealth Electoral Act 1918* to:

- allow the date of the witness signature on the postal vote certificate to be the determining date for validity of postal votes; and
- to require postal voters and witnesses to confirm that the required voting actions were completed prior to the close of poll in the state/territory in which the electoral division for which the voter is enrolled, is located.

## Modernising postal vote applications

3.160 In examining issues related to postal voting, the committee has been made aware of other issues relating to the formality of postal vote applications (PVAs) that result in delays to postal votes being issued and may act as disincentives for electors to make application or to follow through and lodge a postal vote after having lodged a postal vote application.

3.161 The AEC told the committee that it sees considerable benefit to be gained by giving electors the option of applying for a postal vote online. In order to give effect to this proposal the AEC suggests it would be necessary to remove the requirement for PVAs to be signed by both applicants and witnesses.<sup>77</sup>

3.162 The grounds upon which an elector must rely in order to apply and receive a postal vote are set out in schedule 2 to the Commonwealth Electoral Act. The provisions relating to PVAs are found in Part XV of the Commonwealth Electoral Act and specifically in sections 184 and 188.

3.163 Section 184 provides amongst other things that PVAs:

- shall be in writing in the approved form (s.184);
- must be made to a Divisional Returning Officer (DRO) or Assistant Returning Officer (ARO);

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<sup>77</sup> Australian Electoral Commission, submission 169.18, p 4.

- must be made after the issue of the writ or the public announcement of an election; and
  - must be received by the DRO or ARO prior to 6 PM on the Thursday that is two days before polling day.
- 3.164 Section 187 provides for the duties of a witness to a PVA and specifies that a witness must:
- be satisfied of the identity of the elector;
  - have seen the elector sign the application;
  - know that the statements are true or;
  - be satisfied on the basis of inquiries of the elector that the statements on the application are true.
- 3.165 Section 188 provides that PVAs must be properly signed and witnessed, before the DRO or ARO must send postal voting papers to the applicant.
- 3.166 The AEC told the committee that some 50,000 defective PVAs were received at the 2007 election. The AEC was required to write to each of the electors who submitted a defective PVA and the electors were required to fill out and submit a fresh PVA to the AEC.<sup>78</sup>
- 3.167 When questioned about the major reasons why PVAs were considered to be defective, the AEC advised the committee:
- Approximately 70 per cent of those defective applications were because of problems with witnessing. There were about 35,000 postal vote applications that had to be returned because there were problems with witnessing, there was no signature or the date of the witness's signature was different to the date of the signature of the elector. Of course, returning defective applications in this way adds several more days to the postal voting process.<sup>79</sup>
- 3.168 The committee examined the issue of signatures on PVAs in order to determine whether they were in fact necessary to the postal voting process and what value, if any, was obtained by retaining the signature requirements.

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78 Australian Electoral Commission, submission169.18, p 5.

79 Dacey P, Australian Electoral Commission, transcript 11 May 2009, p 3.

- 3.169 The committee closely questioned Mr Paul Dacey, acting Electoral Commissioner, who has some 25 years of experience as an electoral administrator, about postal vote application processes.<sup>80</sup>
- 3.170 Mr Dacey told the committee that the 35,000 defective PVAs comprised:
- 2,580 PVAs with no witness signature at all;
  - 7,158 witnessed but not dated by the witness; and
  - 24,636 PVAs where there was a difference between the date of witness and the date of signature of the elector.<sup>81</sup>
- 3.171 Mr Dacey told the committee that there are no checks made of the witness signature, and that even though the signature of an elector was presently captured on both the PVA and the subsequently lodged postal vote certificate, the only time the AEC would check the elector signature against an original enrolment record was where the vote was subject to challenge.<sup>82</sup>
- 3.172 Despite concerns to the contrary being expressed during the hearing, Mr Dacey advised that there would be no lack of integrity in the postal voting process, as the AEC was only suggesting removal of the applicant and witness signatures from the postal vote application. The postal vote certificate in which the ballot papers were lodged when the vote was received by the AEC would still bear the signature of both an elector and a witness.<sup>83</sup>
- 3.173 Mr Dacey advised that it is important to have the signatures of the elector and witness on the postal vote certificate containing the ballot papers, and agreed that they add to the integrity of postal voting. Mr Dacey told the committee, however, that the AEC believed no requirement existed under the Commonwealth Electoral Act for the AEC to check the bona fides of any witnessing that occurs, but that where a challenge to the legitimacy of any postal vote occurred, the AEC still had the ability to go back to the original signature on an enrolment form for comparison.<sup>84</sup>
- 3.174 Whilst certain that there would be no integrity issues with removal of applicant and witness signatures from PVAs, Mr Dacey was, however, unable to advise the committee why it was considered necessary for those

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80 Dacey P, Australian Electoral Commission, transcript 11 May 2009, p 3.

81 Dacey P, Australian Electoral Commission, transcript 11 May 2009, p 5.

82 Dacey P, Australian Electoral Commission, transcript ,11 May 2009, p 5.

83 Dacey P, Australian Electoral Commission, transcript, 11 May 2009, p 5.

84 Dacey P, Australian Electoral Commission, transcript, 11 May 2009, pp 5-8.



signatures to appear on a PVA at the time the requirement was originally introduced into the Commonwealth Electoral Act.<sup>85</sup>

## Committee conclusion

- 3.175 The committee accepts that the requirement to provide both the signature of an applicant and a signature of a witness on postal vote applications can lead to delays where electors make errors in filling out a postal vote application form. The committee considers that there appears to be no strengthening of integrity associated with the provision of witness and applicant signatures on PVAs.
- 3.176 Similarly, the committee accepts that there would, indeed, be a lack of integrity if the postal vote certificate which actually contains the ballot papers was not signed or witnessed. However, there is no suggestion that signatures ought to be removed from the certificate containing the ballot papers.
- 3.177 The committee agrees that removing the requirement to provide applicant and witness signatures on PVAs will allow for the submission of postal vote applications electronically.
- 3.178 Such a move aligns with the committee's desire to remove restrictions which force the AEC and electors to operate in a paper-based environment when it is clear that there is a growing public expectation that such interactions should be conducted electronically wherever possible.
- 3.179 It is clear that there were some 50,000 PVAs lodged at the 2007 election which required rectification. The AEC has informed the committee that it was necessary to write to the electors concerned and request them to resubmit compliant applications. Such practices are clearly time consuming and costly, with no apparent benefit to the integrity of the system arising.
- 3.180 The committee notes that postal vote certificate envelopes will still be signed by the elector and the witness. It is this aspect of the postal voting process where the need to ensure integrity resides.
- 3.181 The committee is aware that all applicants for enrolment provide a signature at the time of enrolling and that the AEC holds a record of those signatures. Similarly, electors who qualify to become general postal voters and lodge applications accordingly provide their signature to the AEC on those applications.

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85 Dacey P, Australian Electoral Commission, transcript, 11 May 2009, pp 8-9.

- 3.182 It is evident to the committee that enrolment records and general postal voter applications also provide ready sources of elector signatures which can be used for comparison against the signature contained on postal votes.
- 3.183 Removing the need for signatures on PVAs will allow postal vote applications to be made electronically, significantly reduce the lodgement of defective PVAs, provide both savings in time and cost and have no adverse effect on the integrity of postal voting.
- 3.184 Accordingly, the committee recommends removal of the requirement that postal vote applications be signed by an applicant and witness.

### **Recommendation 6**

- 3.185 **The committee recommends that the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to remove the requirement that postal vote applications be signed by an applicant and a witness, in order to facilitate the lodgement of postal vote applications online, electronically, or in written form, to reduce the incidence of postal vote applications being deemed defective, thus leading to delays in the delivery of postal voting packs to electors.**